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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 2991

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1990, AND FOR OTHER PURPOSES

Part 2 (Pages 1-712)

Department of Commerce
Department of State
Federal Communications Commission
Legal Services Corporation
Small Business Administration
The Judiciary
U.S. Information Agency

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CONTENTS

Thursday, April 13, 1989

Page
Department of State: Secretary of State 1

Wednesday, April 19, 1989

Department of Commerce: Secretary of Commerce 131

Thursday, April 20, 1989

Department of Commerce: National Oceanic and Atmospheric Administration 271

Tuesday, May 2, 1989

Legal Services Corporation 425
Small Business Administration 581

Wednesday, May 10, 1989

The Judiciary:

Supreme Court 615
Care of the Buildings and Grounds 643

Thursday, May 18, 1989

Federal Communications Commission 651
U.S. Information Agency 711

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, APRIL 13, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:02 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Ernest F. Hollings, (chairman) presiding.

Present: Senators Hollings, Bumpers, Lautenberg, Adams, Rudman, Kasten, and Gramm.

DEPARTMENT OF STATE

SECRETARY OF STATE

STATEMENT OF JAMES A. BAKER III, SECRETARY OF STATE

ACCOMPANIED BY:

ROBERT E. LAMB, ASSISTANT SECRETARY FOR DIPLOMATIC SECURITY

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PETER MADIGAN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS

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CHARLES R. CASPER, DIRECTOR OF RESOURCE POLICY, STRATEGIC ANALYSIS, AND LEGISLATIVE PLANNING

THOMAS G. WESTON, LEGISLATIVE ASSISTANT TO THE UNDER SECRETARY FOR MANAGEMENT

SALLY J. CUMMINS, ATTORNEY ADVISER

KIM HOGGARD, SENIOR DEPUTY ASSISTANT SECRETARY FOR PUBLIC AFFAIRS

OPENING STATEMENT

Senator HOLLINGS. This morning the subcommittee begins our hearings on the 1990 budget of the Department of State. As I indicated at our hearing on Tuesday with the Board for International Broadcasting the requests of international affairs agencies in this bill total $4.6 billion, an increase of 21 percent over 1989. The Department of State's 150 accounts in this bill total $3.2 billion.

I do not know how far we will be able to go in meeting these requests as the overall budget negotiations are still in progress. I do know that the Reagan/Bush budget for 1990 continues the policies of eliminating domestic programs like EDA, marine research, juvenile justice and delinquency prevention, and legal services for the poor. Congress did not resist Ronald Reagan for 8 years on these programs to give them up to George Bush.

We are pleased to have with us this morning the distinguished Secretary of State, James A. Baker III. While this is the Secretary's first appearance before the subcommittee on behalf of the Department of State, we remember him well as the Under Secretary of Commerce in the Ford administration.

The Secretary needs no introduction as he has served the Nation well as President Reagan's Chief of Staff and the Secretary of Treasury in preparation for his current position. In fact, when I read Mr. Baker's biography last night, I got the impression his résumé was starting to resemble President Bush's in terms of the varied capacities in which he has served. Elliott Richardson may have been Secretary of four departments, but I recall no one who has served in the three positions that you have occupied since 1981.

Mr. Secretary, we welcome you, and realizing how much more busy you are required to be I will yield to my colleague, Senator Rudman.

Senator RUDMAN. Thank you very much, Mr. Chairman. I welcome Secretary Baker's first appearance before the subcommittee. We have always had a great relationship here with the Secretary of State, and we know it will continue with the incumbent. We are going to be discussing a number of issues. We sometimes get into other issues than straight budget issues at this subcommittee since this is our only chance to have you before us.

But I want to talk about the budget just a bit. Reading the material that your budget office prepared, I am struck, as always, by the term "current services," as used to describe the funding increases. There is remarkably little detail about current services. They are assumed as givens.

Someone once said:

> A curious wonderland quality has taken over the habit of mind that governs Federal budgeting. The habit is described by a phrase that is common among Washington budgeteers, current services baseline budgeting. If the real world deficit is to be reduced, programs must not be assumed to be immortal and inflation cannot be built in as a given at last year's level of service, and every program must not be treated as the presumed minimum acceptable level for next year.

That quote, by the way, was from a document called "Building a Better America" prepared by two fellows named Bush and Darman. So we look forward to hearing your budget request this morning, and how your current services are defined.

Senator HOLLINGS. Mr. Secretary, as Senator Rudman has indicated, we work very closely with the Secretary of State. We have been having a lot of problems, and you shouldn't really be bothered by the day-to-day financial problems within your own Department, because your assistants work with us, and we will be working with them and we should not be harassing you in any fashion.

I look forward to a good relationship, because, as I said, we have known you since you appeared before us as Under Secretary of Commerce.

Senator LAUTENBERG. Since he was a little boy.

Senator HOLLINGS. Frank, he is an old man. He can tell us a lot. Do you have an opening comment, Senator?

Senator LAUTENBERG. I join you, Mr. Chairman, in welcoming the Secretary. I look forward to his testimony, and I will wait to ask some questions, Mr. Chairman. Thank you very much.

Senator HOLLINGS. Very good. Mr. Secretary, of course, the committee just received your statement late last evening. A good part of it covers a lot of things we are interested in the very first part with regard to policy, and then into the financial presentation. We can accept the statement in its entirety, and you can give it in its entirety or highlight it as you wish.

Secretary BAKER. Mr. Chairman, I won't give it in its entirety. I would ask that it be submitted for the record and I would like to make a few summary remarks, if that is all right.

Senator HOLLINGS. Very good. We appreciate it.

Secretary BAKER. I am convinced, Mr. Chairman, that the Bush administration's effectiveness in pursuing America's fundamental goals and objectives abroad depends on our capacity to lead; on our willingness to engage; on close cooperation between the executive and legislative branches of Government.

We have talked a lot about the importance of restoring bipartisanship, particularly in foreign policy, and I want you to know and the members of the subcommittee to know that the President and I pledge to work with Congress to set a sound and consistent foreign policy. And we pledge to reach a concensus if we possibly can on the means to carry that out.

No foreign policy, however well-intended it might be, can be meaningful unless we have the resources to do the job. That requires highly trained professionals whose skills are up to the task of developing and executing programs and policies which are suited to the times, and it means as well, Mr. Chairman, having the ability to play an active leadership role in cooperative international efforts, organizations, and conferences.

This is an age when solutions to international problems can't always be found within the limits of traditional State-to-State relations. The personnel and the programs of this Department are, of course, the primary foreign policy instruments of the United States.

With all of my bias and prejudice as Secretary of State hanging out here, it is my view, Mr. Chairman, that we have got to ensure the effectiveness of these instruments.

When I took the oath of office in January, I made a special point of saying that we need both diversity and openness in our domestic and international affairs. The greatness of this country rests on the twin foundations of opportunity for all and a fair hearing for all views. These are, at once, the characteristics of a great nation, but they are also the characteristics of an effective foreign policy.

I strongly believe that the professionals who make our foreign policy work must also reflect the talents and the abilities of all segments of this society of ours. Mr. Chairman, I stand ready to work with you and with the Congress to ensure that that is the case.

OVERVIEW OF FUNDING REQUEST

I appreciate the efforts that this subcommittee makes to understand the needs of the Department of State, its personnel, its machinery, and its institutional concerns. For budget function 150, we are asking $19.3 billion in discretionary spending authority for fiscal 1990. Of that, we are requesting appropriations for the State Department totaling $3.27 billion.

The President is requesting $2.38 billion for the key component of our Nation's diplomacy under the heading "Administration of foreign affairs." These funds are for the Department's basic diplomatic and consular functions. Our request represents a $217.2 million increase over the 1989 level. One hundred and eight million dollars of this, Mr. Chairman, is for the Buildings Program. Most of the remaining increase is for salaries and expenses, reflecting built-in adjustments such as wage and price inflation, funds needed to enhance diplomatic security, including construction security, and improvements to our communications and computer networks.

For international organizations and conferences, the Department requests $832.5 million for our assessed contributions to international organizations, the United Nations peacekeeping activities, and for American participation in multilateral and international conferences.

The total also includes $46 million as the first installment in our plan to pay the arrearages in our assessed contributions to multilateral organizations.

For international commissions, we request $37.5 million to meet our treaty commitments under boundary agreements that we now have in force with Canada and Mexico, and to cover our share of expenses as a member of international fisheries commissions.

Also included in this budget request are resources for bilateral science and technology agreements with Yugoslavia and Poland; the Asia Foundation; the Soviet-East European research training fund; the fishermen's guaranty fund; and the fishermen's protective fund.

Mr. Chairman, fluctuations in exchange rates, different rates of inflation here and abroad, the continuing need to enhance the security of our posts and personnel overseas, and the overall budget crunch have combined to weaken, in recent years, our foreign affairs infrastructure. We simply cannot afford, in my opinion, to let that situation deteriorate further.

Let me turn briefly, Mr. Chairman, to some of the issues of significant interest to this subcommittee.

DIPLOMATIC SECURITY

Congress passed and the President signed the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. This landmark legislation gave us a major start on the authority and the resources necessary to implement the recommendations of the Inman panel. The

Inman panel found that buildings at 134 of our 263 posts were substantially below minimum security standards. This led to our joint commitment to begin the most extensive construction program in the Department's history.

Subsequently, we began a multiyear program to replace and upgrade facilities at our most vulnerable posts overseas. While we have made significant progress, we think, there is a lot that remains to be done.

MOSCOW EMBASSY

Final resolution of the Moscow Embassy building problem is another issue that is high on my list of priorities, as I know it is, Mr. Chairman, on yours.

Our reexamination of all the options that are available is well underway. I think you have been briefed here in recent days by individuals from the Department. I expect to be making a recommendation to the President shortly. In the meantime, I expect to be consulting closely with the Congress, with you, and with all other concerned parties, Mr. Chairman, on this issue. To spearhead the decision and implementation process and to give it the constant high-level attention it deserves, as you know, I have appointed Ambassador Nick Salgo to a new high-level position in the Office of the Under Secretary of State for Management.

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

After several years of concerted effort on the part of Congress and the Executive, we are pleased to report significant progress toward reform in the United Nations and its affiliated agencies. Therefore, we are requesting full funding for United States assessed contributions to the extent permitted by law, with the exception of the United Nations interim force in Lebanon. Included in the request is $46 million, as I mentioned before, to begin payment of prior year arrearages, which total $624 million altogether.

Of this amount, we plan to pay $562 million over the coming years. We do so in recognition of the expressed administration and congressional intent to meet U.S. obligations in response to meaningful progress toward reform. It also would encourage implementation of reforms and would advance U.S. programmatic interests. Payment of the arrearages will be conditional, of course, upon agreements with organizations on special activities toward which the funds would be directed.

PEACEKEEPING ACTIVITIES

In the last year, there has been a dramatic increase in the need for funds to support United Nations peacekeeping activities. Efforts have been or are being launched in Namibia, Angola, Afghanistan, Iran, and Iraq. Meanwhile, peacekeeping activities continue on the Golan Heights and the Lebanon-Israel border.

Remarkable progress has been made in diffusing regional conflicts in Africa and in the Persian Gulf. We must not fail to contribute the United States' assessed share of these peacekeeping efforts.

FOREIGN POLICY OBJECTIVES

Mr. Chairman, we need to work together also to ensure that the State Department continues to serve our Nation's most fundamental foreign policy objectives. Given budget constraints, the Government must learn to do more with less, and we understand that. We take that lesson seriously. But as a Nation, we cannot afford to diminish our effectiveness abroad. America has got to remain a strong force around the world for peace, for humanity, for democracy, and for prosperity.

FOREIGN POLICY AGENDA

That, Mr. Chairman is the real bottom line that we are talking about in this hearing today. Finally, just a word or two about what we have been doing across the breadth of the U.S. foreign policy agenda. I, as you know, have made fairly recent trips to Europe, where I met with Soviet Foreign Minister Shevardnadze for the first time. I also met with all my NATO counterparts. And I have made a trip, as well, with the President to the Far East, where we visited Japan, China, and the Republic of Korea.

The administration has recently negotiated and the Congress is now voting upon a new bipartisan accord on Central America aimed at achieving peace and democracy in the region as a whole. Within the last several weeks, I met with Israeli Foreign Minister Arens, and just this last week, I met with Prime Minister Shamir and with Egyptian President Mubarak as did, of course, the President of the United States. Jordan's King Hussein will be coming to Washington next week to continue these discussions. And as you know, we are engaging, through our ambassador in Tunis in meetings with the Palestine Liberation Organization.

In all of these discussions, Mr. Chairman, we have stressed the pressing need to bring about a comprehensive settlement between Israelis and Arabs in the Middle East.

PREPARED STATEMENT

Mr. Chairman, I would be pleased to answer such questions as you and the subcommittee might have.

[The statement follows:]

STATEMENT OF JAMES A. BAKER III

Mr. Chairman, Members of the Subcommittee:

I am honored to appear before you today as Secretary of State to discuss our foreign policy and components of our Fiscal Year 1990 budget proposal in support of that policy.

America today is a strong and vibrant nation. The American system of government works and our democratic values and our institutions are solid. Abroad, the United States, working with its allies and friends, has fashioned an international environment more conducive to freedom. We can lead the world toward a promising future. But to do that, we must understand our world and the way it is changing.

Let me cite the major changes we see today:

-- Around the globe, there is increased respect for and interest in democratic values of openness, human dignity, pluralism and democracy.

-- Today, we find ever broader acceptance of the proposition that in our increasingly interrelated world, national security cannot be achieved through military means alone.

-- With the help of creative American diplomacy, regional conflicts long thought to be intractable have begun moving toward resolution.

-- Our most powerful foe, the Soviet Union, so aggressive a decade ago, is undergoing a soul-searching of historic proportions.

-- Through their own experience and by our example, more and more nations are realizing that the freeing of market forces and human creativity is the true basis for sustained prosperity and national success.

-- There is greater recognition of the need for cooperative solutions to worldwide concerns such as environmental issues and global economic growth.

For the most part, these changes are positive and they reflect our objectives. There is every reason to look to the future with optimism. Still, it would be a serious mistake to assume that continued progress is assured. In all the transformations underway -- the democratic revolution, the spread of free enterprise, major changes in the communist world, rapid changes in technology, and changing strategic-military relationships -- there are trends to be found favorable to our interests. But there is and can be no reason for complacency. Every one of these transformations holds within it a contrary trend that could set us back.

-- We could advance toward an increasingly democratic world, or, if fragile democracies fail, the cause of freedom could be set back.

-- The international economy could continue to grow, or the stresses of competition could lead to protectionism and rival trading blocs -- ultimately to the disadvantage of all.

-- A properly conceived approach by the Atlantic Alliance could extend the progress we have made with the Soviet Union. Or through mistakes on either side of the Iron Curtain, this opportunity could be lost.

-- Finally, new military technologies could provide greater stability at lower levels of forces. Or we could encounter a new and darker age if we cannot halt the spread of weapons that put nations on a hair-trigger, particularly in politically unstable regions.

Important differences based on fundamental values and interests continue to guide the policies of nations -- both toward their own citizens and toward other members of the international community. Being fundamental, these differences must never be minimized. They do not lend themselves to easy resolution.

Thanks to eight good years of the Reagan era, we are more confident going into the 1990s than we were at the beginning of the 1980s.

This Administration pledges to work with Congress to ensure that we remain in a strong position to tackle the foreign policy challenges ahead. To succeed, the Executive and Congress must approach foreign policy in the spirit of bipartisanship. This does not mean that we will not have our differences. Airing those differences in a manner that respects the right of others to disagree is a strong affirmation of the democratic process. But eventually we must proceed. And when we do it is best that we do so together if we are to achieve the national interest.

Recent experience affirms this lesson. When we held the line together, on Afghanistan for example, and throughout the INF negotiations, we succeeded. When we did not -- as in Central America -- the outcome was unsatisfactory to everyone.

Proceeding together in a bipartisan fashion also means more than just verbal agreement. It also requires a pragmatic investment of funds. And that is why I am glad to come before this Committee today to discuss the main lines of our foreign policy and our fiscal year 1990 budget request in support of that policy, particularly as it relates to the State Department.

Armed then with the conviction of American leadership and the practice of bipartisanship, let us together -- the Executive and the Congress -- tackle the formidable agenda before us.

The International Agenda: The Americas

First on that agenda is our neighborhood -- the countries of our hemisphere.

We share with Canada a border extending over 5,000 miles. And while we have our differences from time to time, as all nations do, that border has long facilitated peaceful contact between peoples sharing similar values and outlook, as well as commerce on an enormous and growing scale.

Recently, working with Canada, we achieved a Free Trade Agreement. The Agreement is in our mutual interest. Moreover, by showing how free trade policies can promote economic well-being and turn back the forces of protectionism, it also represents a signal success in a strategy designed to move all nations toward a more open trading system. And we look forward to working with Canada on other important issues, including international environmental problems, as we extend the range of our cooperation.

To the South, we have equally significant issues to consider.

I'd like to reiterate the suggestion I made in my confirmation hearing. In 1992, we will celebrate the 500th anniversary of Columbus' voyage of discovery. Let us mark that event now by embarking on a voyage of rediscovery -- of the Caribbean and of South America. Our neighbors are engaged in a quest for economic progress and greater freedom. We share many of their interests. And together we also face the scourge of drugs. Now is the time to take a fresh look at these problems.

The United States will not stand aloof from the important challenges confronting countries in the southern part of our hemisphere. Our neighbor Mexico is deeply in debt and faces serious challenges to its social fabric. But Mexico also has many assets -- the capabilities of its people and its significant natural resources. The Mexican Government, led by President Salinas, is taking the difficult road of economic and political reform. We are determined to help.

Two weeks ago during the elections in El Salvador, we witnessed again the determination of ordinary people to vote to choose their leaders even where they had to risk their lives to cast their ballots.

Our Administration has negotiated a new bipartisan accord with the U.S. Congress on Central America, aimed at achieving peace and democracy in the region as a whole.
We are committed to work with Latin and Central American democratic leaders to translate the bright promise of the Esquipulas Agreement into concrete realities on the ground. Together, we must insist that the promises of Esquipulas for democracy, peace, and security are not only kept, but verified, and that the Nicaraguan people's right to be free is ensured.

Moreover, the Soviet Union now has an opportunity to demonstrate "new thinking" in Central America by reducing its level of military support and supporting democracy, not insurgency. And, if we support dialogue between the Government of El Salvador and the Marxist guerrillas to end the conflict there, then we must insist on dialogue between the Government of Nicaragua and the peasant army of the Nicaraguan Resistance.

Transformation of our Allies and Friends

Let me move now from our neighborhood to the world overseas. The United States links together two highly dynamic, advanced regions -- Western Europe and the Pacific. We are at once an Atlantic and a Pacific power, and there should not be any thought to expand one relationship at the expense of the other.

Our friends and allies in both regions are experiencing great changes. Western Europe today is a far cry from the exhausted continent which emerged from World War II. I believe that we are beginning to develop a new appreciation on our side and theirs of how we can adapt to these changes and to a different world.

I found a consensus among our Atlantic and Pacific allies (at least in general terms) on how we should deal with a changing Soviet Union. I found a recognition that we will need a common approach to the new opportunities created by the INF Treaty and CFE talks. We are working with our allies to refine a "comprehensive concept" on security and arms control. We must also develop an equitable basis for sharing risks and responsibilities.

We also talked on my trip about how we, the U.S. and its West European friends, can work better to respond to the enormous economic changes which are taking place in the Atlantic region. In only three years, the Common Market will achieve the objective of the 1957 Treaty of Rome which established it -- a single market. I emphasized that the new Europe -- this rising economic superpower -- must be outward and not inward looking. I noted also that as an ally and a major trading partner, the United States will take a keen interest in this transformation.

Turning to the Pacific Rim, we find a striking success already in the making. No other area has created such advanced economies in such a short time.

Our relations with the Pacific -- as with Europe and our own continent -- must emphasize outward-looking economic policies that promote trade and growth. I do not underestimate the challenge in Asia, or in other regions, of achieving free and fair trade. After nearly a decade when the American economy has driven international growth, we all face a changing world. The rule that success brings responsibility will find a fuller expression as the Pacific nations assume more important economic and political roles.

We have vital political and strategic interests in the Pacific as well. These interests are well served by military capabilities based in Japan, the Philippines and Korea -- and by our close cooperation with these nations. We must enhance that cooperation while shouldering common defense and development responsibilities.

During the President's recent trip to the Far East, he emphasized these points with the leadership of Japan; the People's Republic of China and the Republic of Korea.

Our relationship with the People's Republic of China, important in its own right, also contributes strongly to the overall stability of the international political order. President Bush's extensive, personal experience in China will facilitate the expansion of our important and multifaceted ties.

Transnational Issues

The future of our civilization also demands that we act in concert to deal with new transnational issues. Technological advances have brought enormous benefits. But at the same time, modern technology has created new complications. The old scourge of terrorism, for example, has taken on a new significance because of instantaneous communications and the development of powerful plastic explosives. Missile technology has magnified the destructive power and geographical reach of small groups determined to achieve their purposes by whatever means necessary.

The drug traffickers have benefitted from transportation and communications lines that often rival those of government.

It is increasingly evident that we face serious challenges to the health of our environment, and President Bush has called for an international conference on global environmental issues. I believe the United States must lead this effort. We should foster a change of attitude, a recognition that economic development and a secure environment are both necessary. They go together. As Treasury Secretary, I pressed the multilateral development banks to foster conservationally sound, sustained development, and to initiate special programs to promote conservation in developing countries. As Secretary of State, I hope to build on this record.

No one has yet perfected the approaches to joint action we need to deal with this special range of global problems. But the stakes are too high for us to ignore them. We will begin with our allies, include our friends, and challenge our adversaries to make common cause in treating these issues. Indeed, we have already obtained Soviet agreement to add transnational issues as a fifth part of the U.S.-Soviet agenda. For implementing policies and programs we will continue to rely heavily, although by no means exclusively, on the United Nations and its specialized agencies, which are contributing importantly to resolving many of the world's shared problems.

East-West Relations

Thanks to our policy of pursuing peace through strength, our dealings with the Soviet Union are less tense. We have made progress in arms control -- especially the INF Treaty -- human rights, bilateral ties, including a dramatic expansion in academic and cultural exchanges, and regional conflicts.

No one can doubt that change is underway. Soviet troops have left Afghanistan. Some political prisoners have been released. Emigration has increased dramatically. The Soviet Union has begun to expose its people to the heady notions of popular ballots and competitive elections.
And a new, more constructive Soviet approach to regional conflicts in Southern Africa and Southeast Asia holds out the promise that regional problems in those troubled areas may be on their way to resolution. And despite the recent

complications posed by SWAPO's incursion into Namibia, we have reason to be optimistic that in the not too distant future Cuban troops will be withdrawn from Angola in conjunction with South Africa's departure from Namibia and the introduction of elections. We also look forward to the day when Vietnamese troops leave Cambodia.

No one can doubt that ferment is underway elsewhere in the East Bloc. We see far-reaching internal reforms initiated in Poland and Hungary -- reforms begun even prior to Mr. Gorbachev's efforts in the Soviet Union and driven by popular and economic imperatives. It is fascinating to hear the ongoing debates on the American- versus the French-style presidency. Throughout Eastern Europe, we see citizens pressing harder for personal freedoms and democracy in national life.

There are good reasons for both optimism and pessimism about the Soviet Union and Eastern Europe. But realism requires us to be prudent. The jury is still out on whether the process of reform will succeed. The internal resistance to reform appears to be stronger than Mr. Gorbachev anticipated. He is having better luck with political as compared to economic reform.

The Berlin Wall still stands as does the Brezhnev Doctrine. The Soviet Union remains a heavily armed superpower. While Soviet rhetoric is different, the force structure and policies that support far-reaching interests and clients have not yet changed commensurately. Perhaps they will, but that hasn't happened, not yet.

In light of both the change and continuity in the Soviet Union, realistic policy for America and its allies should be guided by these principles:

First, we should continue to welcome and encourage reform in the Soviet Union and Eastern Europe that promises more freedom. But the impetus and the foundation for meaningful reform must exist first within a country before encouragement from abroad can be effective. Perestroika depends not on help from outside, but on changes in the Soviet Union itself. That's a lesson Gorbachev learned from Brezhnev's failures. We should learn it as well.

Second, while recognizing that Moscow's policies are informed by a new sense of realism, we should also understand that our policies have contributed to that sense of realism. Our support for the Mujaheddin helped bring about the Soviet withdrawal from Afghanistan. NATO's willingness to deploy the Pershing and cruise missiles helped bring about the INF Treaty.

Third, we must continue to probe -- even challenge -- Moscow on every aspect of our expanding agenda -- arms control, human rights, regional conflicts, bilateral relations and transnational or global issues. We are interested in cooperating and negotiating to make progress wherever it can be made. We are also interested in seeing the "new thinking" applied in practice, not just in slogans.

Fourth, we need additional focus on regional problems, whether in Central America, South Asia, the Horn of Africa, Southern Africa, the Persian Gulf or the Arab-Israeli conflict. Soviet responsiveness in these areas may be one of the best indications of real change in Soviet behavior. Indeed, Moscow's responsiveness to our concerns about subversion in our hemisphere will be a key indication of Soviet intentions.

I explored these and other points during my first meeting with Foreign Minister Shevardnadze in Vienna. The Foreign Minister called it "a good beginning" and I would agree with that assessment. The atmosphere was positive and we had a broad, substantive discussion, including an hour one-on-one and an hour plenary. We decided to meet again in early May.

Let me give a brief review of our discussion.

I told the Foreign Minister, just as I've told our allies, that we believe perestroika is good for the Soviet Union and good for the world. It is clear to us, however, that the success of perestroika really depends on actions within the Soviet Union.

Mr. Shevardnadze agreed with my suggestion that we could expand the agenda of U.S.-Soviet relations to deal with missile and chemical proliferation and also transnational issues, such as the environment, drugs, terrorism and health. We also reviewed the existing agenda. After presenting him with a list of urgent human rights cases, I made clear that our commitment to attend the Moscow human rights conference in 1991 depended on continued progress. We want human rights gains to be institutionalized so they cannot be easily reversed.

The Foreign Minister understood that we had delayed the START negotiations in order to complete our strategic review. I assured him that we were determined to reach agreement, building on past progress, but we had to be sure of our basic strategic needs before we could do it. That's what the review is about.

Now, as you know, I went to Vienna to address the Foreign Ministers before their negotiations on conventional forces and

confidence building measures. My speech emphasized the need for practical proposals that really change force structures so that a successful invasion would become impossible.
I also challenged the USSR to join with us in removing chemical weapons from Europe and destroying them.

I repeated these points to the Foreign Minister and it was encouraging to note that on conventional forces, the Soviets may be moving in our direction. Especially important is that the Soviet approach embodies deep reductions in tanks, artillery and armored personnel carriers. Such reductions could lead to the elimination of their capability for surprise offensive operations. But the differences in the Soviet and NATO proposals are still considerable, especially on the zone concept and their desire to include naval forces and aircraft in the negotiations. So we've got plenty of work to do.

We had a lengthy review of regional issues including Afghanistan, the Middle East, and especially Central America. My overall point here was that we'd like to see Soviet "new thinking" and new slogans filled in with content. In some areas we've seen little sign of content or changed behavior. We haven't seen it at all in Central America. Mr. Shevardnadze's trip and discussions in Iran also were not encouraging in this regard, and I told him so.

Finally on the Middle East, I emphasized the need for positive, constructive action on the ground rather than the premature convening of an international conferences. We want a process that leads somewhere, not just a process that elevates form over substance.
The Soviets could be helpful if they reestablished relations with Israel and used their influence with Syria and radical PLO elements to promote a dialogue between Israel and

Palestinians. Above all, they could restrain radical states opposed to peace, such as Libya.

We agreed that our respective regional experts should get together soon. And on the issue of a summit, we're not ready yet to set a date, but will probably discuss it in the next ministerial in May.

To conclude this review, I am more convinced than ever that Western strength and Soviet domestic weakness have set the stage for the remarkable realism that has distinguished Mr. Gorbachev's tenure so far. As I discussed with our allies, we need to challenge the Soviets with new, well-considered initiatives in all aspects of our expanding agenda. Our task is to arrange affairs so that whatever the outcome of *perestroika*, a more responsible, constructive Soviet foreign policy will remain in Moscow's interest. Much of the world's hope for a more peaceful international order rests on the outcome.

Resolving Regional Conflicts

I want to turn now to those regional conflicts that have denied peace and freedom to the peoples of Africa, South and Southeast Asia, and the Middle East.
We have made encouraging progress in the recent agreement, mediated by the United States, that provides for Namibian independence and a withdrawal of Cuban and South African troops from Angola. And we will be watching carefully to be sure that Cuba and South Africa carry out their obligations. But more is needed. Angola desperately requires national reconciliation. Until that occurs we shall continue to support UNITA and its leader Jonas Savimbi.

To this end we should be prepared to pay our fair share of UN peacekeeping efforts. The Bush Administration, following the initiative of our predecessor, has proposed a one-time transfer of DOD and foreign aid funds to meet our peacekeeping requirements in the current year as part of the FY '89 supplemental appropriation request.

We must also think long and hard about how we can help best to end apartheid in South Africa. And, we must never forget the very real human and developmental needs of people throughout Sub-Saharan Africa.

In South Asia, we welcome the withdrawal of Soviet troops from Afghanistan and look forward to that country's achievement of an independent and non-aligned government fully acceptable to the Afghan people.

The international community looks forward to the withdrawal of Vietnamese forces from Cambodia. There, too, a difficult national reconciliation must be undertaken.
The United States will continue to work for an independent Cambodia, free of both Vietnamese and Khmer Rouge occupation.

In the Middle East, we are in the midst of an active period of diplomacy, including meetings with key leaders to try to advance prospects for negotiations. In discussions last week with President Mubarak and Prime Minister Shamir, we all agreed the status quo was not acceptable, and that progress toward a comprehensive settlement was desired. Both leaders agreed that the gaps between the positions of the parties were too wide, and the atmosphere too unsettled, to consider a major push now directly to negotiations. Rather, what is needed is a step by step process to improve the atmosphere, reduce tensions, bring about Israeli-Palestinian dialogue, and set the stage for direct negotiations.

Our own views regarding the purpose and principles underlying these negotiations have not changed. The objective is a comprehensive settlement achieved through negotiations based on UN Security Council Resolutions 242 and 338. The negotiations will produce agreements that fulfill the principles of territory for peace, Israeli security and Palestinian political rights. We do not support an independent Palestinian state, nor Israeli permanent control or annexation of the West Bank and Gaza. Indeed, it is only through negotiations, not violence, that Israelis and Palestinians can aspire to bring about the end of the occupation in a way that ensures Israeli and Palestinian security and political interests.

We listened carefully to the views and proposals brought by Prime Minister Shamir concerning elections, and believe they constitute a good first step. Elections are an important political act that can launch a process leading to negotiations on both transitional and final status issues. The Prime Minister emphasized this in his discussions with us, and in his public statements. Of course, details need to be worked out, and all sides must bear in mind the need to see elections within their broader political process. In the period ahead, we will be working with Israelis and Arabs to flesh out these ideas, and to try to advance the prospects for successful negotiations.

A Middle East policy focused exclusively on the Arab-Israeli conflict, however, would be too limited. Libya continues to be a destabilizing factor in North Africa and elsewhere in the region. The situation in Lebanon remains a rebuke to everyone's hopes for a restoration of stability and independence for that tragic country. And a lasting peace remains to be established between Iran and Iraq.

We will continue working with other nations on these issues. We will also work with the United Nations on some of these regional conflicts.
The U.N. should be seen for what it is, an expression of the world's desire for peace, and also too often the scene of those passions that prevent peace. Experience indicates that when nations agree on procedures and substance, the U.N. offers a valuable forum for making progress.

Chemical Warfare and Other Weapons Proliferation

Proliferation of new and dangerous weapons, often to states with a history of terrorism and aggression, is of growing concern to the international community. And for good reason. Perhaps most frightening is the combination of the ballistic missile and chemical weapons. Although "justly condemned by the general opinion of the civilized world," to quote the Geneva Protocol of 1925, chemical weapons have been used.

We must take special measures to prevent the use and accumulation of such weapons.

We are determined to build on the recently concluded Paris Conference and to make progress soon. In Vienna, I announced that Australia agreed with us that it would take the initiative in organizing a joint government-industry conference to discuss the growing problem of the movement of chemical weapons precursors and technology in international commerce.

Overview of our Funding Request

Clearly, we face a formidable agenda as we attempt to deal with the contraries of our age. Yet we start with a strong America. And we can be stronger still if we work together to overcome the challenges before us.

That requires our collective wisdom and skill. It also requires resources and the flexibility to use them where they are most needed. I'd like to give you the highlights of the Department of State's funding request for FY 1990.

For budget function 150 -- international affairs -- we are asking $19.3 billion in discretionary spending authority, with the levels of the Export-Import Bank to be determined in negotiations with the Congress. This $19.3 billion is an increase of $1.7 billion or 10 percent over what Congress appropriated for the same programs in FY 1989. But in real terms, it's less than what we received in FY 85, 86, and 87. International affairs spending takes less than two percent of the total federal budget. So in submitting these figures, if I may understate the case, we do not feel we are imposing an unreasonable burden on the resources of the American people. Quite the contrary. We are asking for an investment to secure our vital national interests and a peaceful future.

For 1990, we are requesting appropriations for State Department Operations totaling $3.27 billion. This is an increase of $534.7 million over our 1989 appropriated level.

Our request covers four categories of appropriations: the Administration of Foreign Affairs, International Organizations and Conferences, International Commissions, and Other

Appropriations. Let me now review the specifics category by category.

We request $2.38 billion for the key component of our nation's diplomacy, the Administration of Foreign Affairs. These funds are for the Department's basis diplomatic and consular functions -- salaries and allowances, operating expenses, overseas building construction and maintenance, and diplomatic security.

Our request represents a $217.2 million net increase over the 1989 level. $108.1 million of this increase is for the buildings program, which for FY 1990 includes construction of a badly needed new chancery in Bangkok, a pre-engineered chancery in Port Moresby, Papua New Guinea and several smaller projects.

Most of the remaining increase is for Salaries and Expenses, of which the following components are most significant:

-- $77.3 million for built-in changes such as wage and price inflation, and

-- $62.0 million for the Diplomatic Security Program, of which $48.6 million is for construction security which I will discuss later.

The increase for Salaries and Expenses is smaller than it otherwise would have been due to two changes in our budget formulation. The first is an offset of $67.6 million due to planned increased billing of other agencies for overseas support costs previously borne by the Department of State. The second is the creation of a separate appropriation of $18.7 million for the Office of the Inspector General.

The other program increases within the Salaries and Expenses request are for:

- -- The State Department's contribution to the Seville World Fair ($5.0 million).
- -- The Beltsville Information Management Center, $17.9 million to supplement existing Department computer operations.
- -- The Department of State Telecommunications Network (DOSTN), $19.7 million to modernize the Government's commercially leased diplomatic high-speed circuit program.
- -- Counterterrorism Research and Development, $3.0 million to continue on-going projects to improve detection of terrorist weapons and explosives and to better protect U.S. personnel and facilities from terrorist attack.
- -- Support of the 1990 Economic Summit, $5.2 million to cover U.S. host country costs.

Our second category is International Organizations and Conferences, for which the Department requests $832.5 million to cover full payment of assessed contributions to international organizations of which the United States is a member, payment toward our assessed contributions for United Nations peacekeeping activities, and American participation in multilateral international conferences. The total also includes $46.1 million as the first installment in our plan to repay arrearages in our assessed contributions.

The third category is International Commissions, for which we request $37.5 million to meet our treaty commitments under boundary agreements with Canada and Mexico, and to cover our share of expenses as a member of international fisheries commissions.

Also included in this budget request are resources for bilateral science and technology agreements with Yugoslavia and Poland ($4 million), the Asia Foundation ($8.3 million), the Soviet-East European Research Training Fund ($4.6 million), the Fishermen's Guaranty Fund ($900,000), and the Fishermen's Protective Fund ($1 million).

Mr. Chairman, in combination with the budget crunch a number of other factors have led to a weakening of our foreign affairs infrastructure.

Exacerbating influences include fluctuations in exchange rates, differing rates of inflation between the U.S. and the countries in which we maintain missions, and the continuing need to enhance the security of our posts and personnel abroad. This country simply cannot afford to let the situation deteriorate further.

Let me turn to some of the significant issues of interest to this Subcommittee.

Diplomatic Security

It has now been three years since the Congress passed and the President signed the Omnibus Diplomatic Security and Anti-terrorism Act of 1986. This landmark legislation, the product of careful crafting by Congress, gave us a major start on the authority and resources necessary to implement the recommendations of the Advisory Panel on Overseas Security chaired by Admiral Bobby Inman.

That legislation authorized $2.4 billion to launch a worldwide diplomatic security effort. The Inman Panel found that buildings at 134 of our 263 posts were substantially below minimum security standards. This led to our joint commitment to begin the most extensive construction program in the Department's history. Subsequently, we began a multi-year program to replace and upgrade facilities at our most vulnerable posts overseas. While we have made significant progress much remains to be done.

With the establishment of the Construction Security Program, security has been considered at every stage of planning and building a new embassy. In addition, the program has been extended to include all renovations and upgrades of existing office buildings where classified information is processed or stored. The cost of providing security to protect new embassies against technical penetration is high. In 1990, the Department is requesting $71.8 million for the Construction Security Program, an increase of $48.6 million over the 1989 appropriated level.

Moscow Embassy

Final resolution of the Moscow Embassy building problem is very high on my list of priorities. I know it is high on yours as well, Mr. Chairman, from our correspondence on the subject. It is essential that we get this matter on the road to resolution just as soon as we can, given the importance of our mission in Moscow. Our re-examination of all the options is well underway, and I expect to have a recommendation for the President shortly. In the meantime, we will continue to consult closely with Congress and all other concerned parties on the alternatives, and particularly with your Subcommittee, Mr. Chairman.

To spearhead the decision and implementation process and give it the constant, high-level attention it deserves, I have appointed Ambassador Nicolas M. Salgo to a new high-level position in the Under Secretary for Management's office.

Refugees

I will turn now to our efforts on behalf of refugees. Promoting American values and interests abroad is central to our foreign policy efforts. Respect for human dignity, the alleviation of suffering, contributing to the well-being of the international community -- all these are consistent with our national character as well as our national interests.

We can be proud of America's record of assistance to the world refugee population. The United States leads the world both in providing financial assistance to refugees overseas and in resettling refugees in our own country.

For FY 1990, we are requesting $370 million for Migration and Refugee Assistance and $10 million for the Refugee Emergency Fund.

In administering our refugee admissions program, we have recently encountered pressures never anticipated by the drafters of the Refugee Reform Act a decade ago. In particular, over the past year we have been attempting to deal with the totally unanticipated exodus of tens of thousands of people from the Soviet Union, Eastern Europe, Cuba, Nicaragua and Southeast Asia.

The White House has announced an FY 1989 supplemental for Migration and Refugee Assistance designed to help us with the tremendous number of refugees, primarily Soviets, who have emigrated during the last several months.

The refugee request totals $100 million and will help us deal with the immediate problem. The FY 1989 supplemental provides an additional $85 million for admissions and $15 million more for assistance. In all it provides funds for 28,500 new refugees, including an additional 24,500 for refugees from the Soviet Union. The new total for refugee admissions from the Soviet Union is 43,500.

The Administration also has transmitted to Congress a legislative proposal to create a new immigrant category comprised of persons ineligible for refugee or regular immigrant classification, but those whose admission the President deems to be in the public interest. The primary beneficiaries of this legislation are likely to be Soviets who are neither refugees nor beneficiaries of current visa petitions. We would be able to maintain an open door for these individuals, and confer a regular immigration status, which would grant them permanent resident status.

For the longer term, we are now conducting a policy review. Depending on the outcome, we may need to adjust our FY 1990 request.
As our policy review progresses, we will consult with Congress to achieve a new consensus, one which balances important policy and humanitarian objectives with the resource constraints that we all know so well.

Contributions to International Organizations

After several years of concerted effort on the part of Congress and the Administration, we are pleased to report significant progress toward budgetary and administrative reform in the United Nations and its affiliated agencies. In recognition of this progress, we request full funding for U.S. assessed contributions to the extent permitted by law, with the exception of the United Nations Interim Force in Lebanon. The decision to seek full funding in 1990 for the first time in several years is the major reason for the large increase in this area.

Included in the request is $46.1 million to begin payment of prior year arrearages. These funds would be directed towards special activities that are mutually agreed upon by the United States and the respective international organizations, and their payment would be conditional upon such agreements. The U.S. has accumulated $624 million in total arrearages due to withholdings to meet legislative restrictions, policy considerations, and Congressional reductions of funding requests. Of this amount, we plan to pay $562 million over the coming years.

We do so in recognition of the expressed Administration and Congressional intent to meet U.S. obligations in response to meaningful progress toward reform. This also would encourage implementation of reforms and would advance U.S. programmatic interests.

Let me add that in our own hemisphere, the Organization of American States (OAS) is the logical locus for dialogue on topics of importance to the hemisphere. It can play an important role in the Central American peace process. The OAS will be able to exert its positive influence, however, only if the United States and other OAS members provide the attention and the financial resources it needs.

In the last year, there has been a dramatic increase in the need for funds to support peacekeeping activities. New U.N. efforts have been or are being launched in Namibia, Angola, Afghanistan, Iran and Iraq. Meanwhile, peacekeeping activities continue on the Golan Heights and the Lebanon/Israel border. Remarkable progress has been made in defusing regional conflicts in Africa and the Persian Gulf. We cannot afford to walk away from the process of promoting world peace by failing to contribute our assessed share of these peacekeeping efforts.

Technology

The 1990 budget request includes funding for an Information Management Center in Beltsville, Maryland.
The purpose is to provide the Department with a disaster recovery capability to reduce the vulnerability of our information systems to terrorism and other disasters. We are also upgrading the Department of State Telecommunications Network (DOSTN) to increase the reliability of the Department's communications and make them more cost-effective.

Overseas Administrative Support

Several Congressional committees have repeatedly expressed concern that the Department's Foreign Affairs Administrative Support (FAAS) system subsidizes other agencies thereby encouraging them to maintain excessive personnel abroad. Many have argued that this costs the Government considerably more than maintaining such personnel in the U.S. This concern coincides with increasing financial pressure on our overseas support funding brought on by the declining value of the dollar in recent years.

The Administration is responding to this concern by increasing charges to other agencies to better reflect the cost of State Department provided services. As a result of this effort, our budget request is $77 million less than it would have been otherwise.

Conclusion

Let me conclude by stating my conviction that if we are given the needed flexibility, then the levels in our FY 1990 budget request will enable us to fund essential programs on a modest scale. No foreign policy, however well intended, can be meaningful without the resources to do the job, and the management flexibility to apply them to best advantage.

That requires highly trained professionals whose skills are up to the task of developing and executing programs and policies suited to the times. We must be able to act wisely and well in a demanding, complex and increasingly dangerous international environment. And it means having the ability to play an active leadership role in cooperative international efforts, organizations and conferences. For ours is an age when solutions to international problems cannot always be found within the limits of traditional state-to-state relations.

The personnel and programs of the State Department are America's primary foreign policy instruments. We must ensure their effectiveness. When I took the oath of office in January, I made a special point of saying that we need both diversity and openness in our domestic and international affairs. America's greatness rests on the twin foundations of opportunity for all and a fair hearing for all views. These are at once the characteristics of a great nation and of an effective foreign policy.

I strongly believe that the professionals who make our foreign policy work must also reflect the talents and the abilities of all segments of our society. I stand ready to work with Congress to ensure that this is the case.

I appreciate the efforts this Subcommittee makes to understand the needs of the Department of State, its personnel, its machinery and its institutional concerns.

To sum up, we need to work together to ensure that the State Department continues to serve our nation's fundamental foreign policy objectives -- bilaterally, multilaterally, globally. Given budget constraints the U.S. Government must learn to do more with less. We in the State Department take this lesson seriously. But as a nation, we cannot afford to diminish our effectiveness abroad. America must remain a strong force around the globe for peace, humanity, democracy and prosperity. That is the real bottom line we are talking about in this hearing today.

Thank you.

REORGANIZATION

Senator **Hollings**. Very good, Mr. Secretary. With respect to the organization we have sat around long enough reorganizing the Department, as I said when I had a discussion with my friend Mr. Ivan Selin. I harken back when President Reagan took office along in 1981. The first thing we did was cut everybody's budget 10 percent with two glaring exceptions over in the Pentagon where we instead hired 127,000 additional civilians and over in your Department of State. Every time we look around in this committee, there was a new Assistant Secretary or Deputy Assistant Secretary. I tried, as we all do, to hold it down. We have been very, very much impressed by the operation of our State Department in the field. They are good ambassadors; they are strong country teams, and they are working hard, and there is a tremendous sacrifice and increased danger each day.

Yet we come back, and when we try to have a saving or try to meet the budget constraints, we see more Deputy Assistant Secretaries. Would you say that is too rich, and to just get rid of about one-half of them so you can get your hands on it?

I say this from the standpoint of experience. I wrote then President-elect Kennedy. Dean Rusk was going over to the Department of State, and he was going to depend on Mac Bundy because he said, "You can't get any sense out of that Department. It is quick silver in your hands. I have got to have foreign policy, and that is why I need a National Security Council."

I really appreciate the fact that President Bush has apparently solved that problem with your appointment. We will be looking for foreign policy from the Secretary of State, but in that light, you should know the reason why other departments have gone to the National Security Council and national security adviser, because the Department has been one big can of worms, and they have got more Deputy Assistant Secretaries over there than you will ever meet in your 4 years. [Laughter.]

That is the story, and I think we can save a lot of money down there and put it back in the field. In my travels I find that they are cutting and eliminating in the field, particularly with the crunch in the dollar. They are trying to keep up and make payrolls and cutting back on the chance of the families to visit and everything else. That is ruining the morale, and at the same time, you ask for more here in Foggy Bottom. I would appreciate your comment.

Secretary **Baker**. Well, you opened that comment/question, Mr. Chairman, by referring to reorganization.

Senator **Hollings**. Right.

Secretary **Baker**. I think that there is room for some reorganization within the Department based on what I have learned about it during the transition, and in the 80 plus days that I have been there. I am not sure that all of the problems are made in the executive branch.

I am not trying to point fingers, but we do have down there a whole host of Assistant Secretary equivalent positions that were created by the Congress under legislation that, for instance, mandates that they report directly to the Secretary of State.

Now, I intend to respect that, and those people will report to me just as when I was Secretary of Treasury. Then I had a rule that any Presidential appointee would have direct access to me any time he or she needed it. I think that is the appropriate way to manage and run a department. At the same time, we need to rationalize the paper flow in the Department of State. I intend to utilize the Under Secretaries, the four or five Under Secretary-level appointees, to accomplish that.

What I am also trying to do, Mr. Chairman, to the extent it makes sense, and to the extent that the President thinks it makes sense, is to eliminate some of the ambassador at large positions that have grown up over the years. If I may disagree with you a bit, I, frankly, don't think the problem is one of Deputy Assistant Secretaries. We have a lot of Deputy Assistant Secretaries because we have now a lot of Assistant Secretary or Assistant Secretary equivalent positions in the Department of State, most of which, frankly, have been created by legislation of one sort or another that requires, in some instances, specific reports.

Let me just sum it up by saying that I accept the criticism you make with respect to improving management procedures and processes within the Department of State. I think we can do that. The Under Secretary of State for Management designate, Mr. Selin, is particularly well suited for that, and will do a very good job of it after his confirmation by the Senate.

FOREIGN POLICY AND TRADE WITH LATIN AMERICA

Senator HOLLINGS. You have given us a good review of overall foreign policy in your formal statement. Again, from an experienced standpoint where we started back in the fifties with Operation Pan America, then we had the Alliance for Progress, and lately the Caribbean Basin Initiative. It has all been hit-and-run driving. Every Secretary has come and tried to emulate the good neighbor policy of Roosevelt, but I think it was Mr. Kissinger who never traveled or didn't want to travel there.

That is our real opportunity. Right to the point on the bipartisan deal that you have worked out, I strongly dissent that Ortega will carry it out, and it is not my purpose to go into all the details but sort of raising the specter of democracy.

I met with Ortega back in 1979 because I didn't trust him, but he had six of the Senators, and I said, "All right. I will trust you, and you just prove me wrong," and I went down there. We got him the extra $50 million, from the $75 to $125 million at that time because he was going to have the freedom of the press, religion, democracy, elections, and so we hear now Esquipullas II, Esquipullas I, Sapo II, Contadora III. We all give some kind of title to it. The crowd is totally unreliable.

My point is, Mr. Secretary, that you have got to associate economic development with freedom. It was Aristotle who said, "The strength of the society is the strength of the middle class." There is no middle class to have a free election in Nicaragua, it has long since been gone. The poor little soldier is a Contra, and we insulted him now by stopping the Contra war, stopping the bleeding, stopping the killing. This crowd gives themselves to those stopping freedom because this reflects right down into Panama too. All of those leaders have been ready, willing, and able with Soviet aid to take over.

They say, "See, the United States really is not committed and won't stick, and they will bug out on you and leave you hanging."

We have found, starting with, I guess, LBJ. He went down to New Zealand, and he had linkage. He says, "We will take your beef if you give us some troops," and we got New Zealand troops in Vietnam. Secretary Shultz said, "No linkage." He went around like a purist in an unreal world.

If we can't use the one advantage, namely, the richest market in the entire world, the United States, for you as diplomacy it is called fair trade. Fair trade and free trade. You make it to their economic interests. Market forces do operate, and you make the economic interests of the Japanese real. With respect to foreign policy, we must build a middle class.

It is more interesting out in China and everything else of that kind, with great, big economic opportunities. If I could take 5 percent of the Chinese textile quota on a globalized basis and give it to Latin America, 10 percent of the shoes in Korea and give it to Latin America, 15 percent of the electronics in Taiwan and so on down the line from Japan and reassign it, you see, you can develop a middle class. We have got the education; we have got the grassroots; we have got the Peace Corps.

We can set up a management system for lawyers to draw up their organizations. Unless and until they get a piece of the action, a stake in their society, there is not going to be any stability; there is not going to be any free election.

So all these Secretaries come along, and they all get a big title and two or three visits and we go down, down, down, continuing to lose in our own hemisphere. We have given, in 3 years, $1.5 billion to Afghanistan, and only 2 percent of America knows where it is. We have given much to the Philippines.

But for $200 million, $272, to be exact, we wonder why we lose when Soviets put in $5.7 billion in Nicaragua. And we say, "This is going to work. This is for promotion of freedom and democracy." It is a face-saving copout for the Congress and the administration and for the heads of state down in Latin America in moving on. But as we move on, I hope you will help. Because we have got one last chance here of really developing foreign policy and security in this hemisphere. If you can put in some linkage, if you can help us with the trade policy and, therefore, help you with the foreign policy; they are hand in glove.

Secretary **Baker**. Mr. Chairman, I don't disagree with that last statement. There may be some things in what you said overall with which I might disagree, but I think that trade policy and foreign policy should be very closely related. I have said before that I think we made a mistake in the first Reagan term where we were perhaps a bit too reflexive in our support for free trade. I happen to be a strong free trader. I think free trade is the only way to go.

I do disagree with you a bit with respect to the Peoples Republic of China. I think that is one of the biggest emerging markets in the world. If we don't let them have access to our market, they are not going to let us have access to theirs. We are being outcompeted there by others.

Senator HOLLINGS. I said 5 percent. They will still have 95 percent of what you are giving them. It is a well-considered policy, but we are giving it all to them and nothing down to Latin and South America.

Secretary BAKER. I understand. I guess I may disagree a little with respect to what I saw in your question as moving toward managed trade rather than free trade, but free trade can be successful, and here I agree 100 percent with you, I think. It has to be fair. And as I said earlier, I think we may have made a mistake in bending over backward on the free side of the equation in the first 4 years without paying enough attention to the fair side of it.

But in the second 4 years of the Reagan administration, I think we were very aggressive, Mr. Chairman, in enforcing the fair trade laws of the United States. Ronald Reagan granted more import relief than any President in history. He is the first President in the history of this Republic to ever self-initiate 301 cases.

So I think the focus and the direction change, and I think that will be the philosophy and bent of the Bush administration; that is, that we are going to require fair treatment. It is not just going to be a reflexive knee-jerk free trade approach.

So I hear what you say. I should further add, I think, that our hemisphere is very, very important to this President. He is from Texas; I am from Texas. I think we understand the importance of what goes on in Mexico and the countries to the south.

One of the first heads of state that he visited with as President-elect was President Salinas. We are working on a new approach to debt policy. We are working on a new approach to Central America that, whether you agree with it or not, at least puts us back in the ball game down there.

Before you can talk about economic development, I think you have to talk about stabilizing a situation where peace does not pertain. I don't know exactly how much difference there is between us on some of these things, but I would agree with some of what you said and perhaps disagree with a little of it.

MOSCOW EMBASSY

Senator HOLLINGS. I want to get to just a couple of things about Moscow and security and then yield to my colleagues. I am glad for the attendance here this morning.

With respect to buildings and security, I am glad to see you appoint Ambassador Salgo. We need to not overreact in the security. They made an arbitrary decision somewhere here in Washington under the ruse of a 100 foot setback. So someone runs around the world and he says, "This isn't 100 feet back so get rid of this; get rid of that." And so we did away with the best of properties in Hong Kong and put our people down in the mud and built a 2-foot concrete thing overhead. We don't have 2 feet of concrete protection over the Capitol.

I don't know where we are going with this. Let's make quickly an inventory and save some of these buildings. Rather than selling the best and putting a consulate like in Istanbul in particular, out in the countryside where nobody can get to it and giving up good facilities down in the city. Just keep that to have and use as everyone within your field office recommends. We don't want to waste the money. And in Cairo, we have got an opportunity there for the ambassador's home.

Let me get to Moscow to save time. Mr. Secretary, the reason for our frustration in this committee is this is the 10th year with regard to Moscow. I investigated State Department security when Mark Armstrong, Scott McCleod were in charge in 1954 and 1955. We knew that it could be penetrated, and then when the contract was given to the Soviets themselves, we were positive it would be; and after 4 years and two or three Secretaries, they said, "Well, don't worry about it. We will let them complete the building and then we will remove the bugs."

Now we have found out that the bugs have been sort of education to us. They are in the joints and everywhere else. So in order to remove the bugs, you have got to remove the building, and of course, for diplomatic reasons, they didn't want to raise that subject. We had Gorbachev coming, and so we went into all the antics.

We appointed Schlesenger. We had an engineering report that cost over $400,000. Please don't take us down that primrose path of studying it all over again. We have had votes in the U.S. Senate, and on a bipartisan fashion, we said that no money goes to any kind of construction there until you give us a plan for a limited new building. Now that we put such a fortune into the old building, perhaps you don't need the full eight stories, but you need a whole new building.

What we have there now is a transmitter. Everybody will tell you that. That has been in the open. They have written books about it and everything else of that kind. I am getting classified letters now from the Department containing a marvelous secret of something that has already been in the newspapers and we are studying it and really reappraising it.

You can save a lot of time on that Moscow by moving forward by giving us a plan.

Secretary **Baker**. We are going to move it forward, Mr. Chairman. We are going to give you a plan. We are going to do it soon. We are new people, so we do have to familiarize ourselves with the options and the issues. We are doing that, and you will have it.

Senator **Hollings**. You know all the Government. Man, you have been running it for the last 8 years.

Secretary **Baker**. No, sir; I hate to tell you, but the problem with the Moscow Embassy was not at the forefront of my agenda at the Treasury Department, Mr. Chairman, nor was it really at the forefront of my agenda at the White House. We do need a little time.

My point is, we are going to be back to you with a recommendation. That is going to be done in short order. We do need to get our Under Secretary for Management, who is most familiar with it, confirmed. As you know, he has made a trip over there. We will be up to you very shortly, Mr. Chairman.

Senator **Hollings**. Thank you a lot.

Senator Rudman.

Senator **Rudman**. Thank you, Mr. Chairman. Just following up on that subject briefly, Mr. Secretary, you know, that Embassy is probably the most studied building in the history of mankind. We have committee studies and State Department studies and intelligence studies that probably fill a large closet.

I would only ask one thing. I am sure Ambassador Salgo is an extraordinary man in the area of building construction, and there is no question about his qualifications, but I would hope that people who are looking at this will look very carefully at all of the studies that have been done, particularly those done by people from some of our intelligence agencies. They tell a story, some of which is still classified, Mr. Chairman, that we believe probably is accurate.

One of the options, of course, that has been suggested by the Schlesinger panel was to put an annex next door. That seems very impractical in that in the Embassy, when you get to something you want to talk about that is classified, you put on your coat in the wintertime, walk across the street or through a covered walkway or through a tunnel to another building. That just seems very impractical.

I hope that people look at the ease of operation of the Embassy, Mr. Secretary, as well as the security aspects, because you have got to work there.

Secretary BAKER. That is right. I think you made the point, Senator Rudman, that I was attempting to make in my last answer to the chairman. That is that there are a lot of studies, and those studies don't all come down in the same place. So new people have to at least familiarize themselves with those studies, make their independent judgments and determinations about what is the best approach, and then come up here and consult with you about it.

That is what we are doing. Reasonable minds can differ on this. I know the chairman has a very well-developed view of what has to be done, and that may well be the approach that we end up by saying, yes, that is the only one that makes sense. But I think you made a point that there are a lot of conclusions in those studies, and we at least need to be familiar with them before we make a recommendation to you.

Senator RUDMAN. I think your answer to the chairman reflects a very well-developed position. It proves that you are an excellent Secretary of State. That was a wonderful diplomatic answer.

Secretary BAKER. It also was an understatement, if I may say so.

PRINCIPLE OF COMPARATIVE ADVANTAGE

Senator RUDMAN. Mr. Secretary, I just have two lines of inquiries. We have a lot of people here this morning, and everyone's time is valuable. I want to talk just briefly about the FSX. The Japanese Government had said that they needed a decision by April 1. Of course, that date is now passed. Are they still interested?

Secretary BAKER. Yes; they are.

Senator RUDMAN. Then let me ask this question. During the trade missions of the Japanese to our country and of ours to theirs and the various statements made by their prime ministers over the last 6 years, one of the doctrines that they kept proposing to us was the doctrine of comparative advantage.

What the Japanese were saying to us was that for those who are protectionist in this country—and I am not one of them—that there are many things they do extraordinarily well—many, many things. Our markets should be open to those, as they are, and that as we develop things in our country which could be marketed in Japan in which the United States had the comparative advantage, then those are the items which their markets would be open to.

There is no one in the world that will argue with the proposition that when it comes to uniting airplanes with weapons systems, electronics, avionics, countermeasures, the United States is No. 1 in the world. There is no question about that. We make a fighter aircraft second to none in the world.

Why didn't the Japanese—who enjoy an enormous trade advantage with us, in billions of dollars, with enormous debt—why did they not invoke the doctrine of comparative advantage and say, "Look, this is something you do much better than we do, and we, in fact, will buy the upgraded F-16's from the United States"?

Mr. Secretary, the defense area is an area that I am very familiar with. I have looked at the specifications of the two aircraft, and I think it is illusory to say that the FSX is going to be that different from an upgraded F-16. Why would we not press to have them invoke their own doctrine of comparative advantage?

Secretary **Baker**. I can't answer that, not having been involved in the negotiations, Senator Rudman. But I would suggest to you respectfully that a decision by a country to develop aircraft is not tantamount to closing its market to the products or aircraft products of another country. I don't think that should be looked at as a market-closing measure. My understanding of what they decided was that, rather than buying an aircraft off the shelf, they wanted to develop their own. In that context, their defense agency and our Defense Department then got together and worked out a codevelopment arrangement. So I am not sure this is in any way a breach of the principle of comparative advantage.

Senator **Rudman**. I just respectfully disagree. I think, Mr. Secretary, that I can make a very strong case for the United States adopting the same attitude—including national honor—in developing the HDTV and saying that no Japanese HDTV is going to be sold in America. We are going to sell American HDTV's, and if the Japanese want to do joint ventures in this country, we may allow it.

If there is one instance where the United States should be allowed to sell a $6 to $8 billion product to the Japanese, it is this one. Now, you may recall that last year they wanted to buy the aegis cruiser technology and they would not buy the ship. Now, we can understand that. The Japanese are great ship builders, and I voted for the administration's position that we could not say to the Japanese, "Buy a United States ship built at the Bath Ironworks but not the aegis system on it," so we sold them the Aegis technology. But the FSX, Mr. Secretary, is a whole different issue. On the trade issue alone, we think that the administration is wrong; at least some of us do. We have respectfully disagreed.

Secretary **Baker**. Senator, let me say that if they had told us, "We are not going to buy your F-16 or whatever comparable aircraft it is, and we are not going to develop our own; we are going to go to country *x* and buy it, even though we have to pay more for it and it is not quite as good," that would, it would seem to me, violate the principle because then they would, in effect, be closing their market to our product.

I understand the point that you are making with respect to the trade imbalance, and I think it is a very valid point. I think that that can be mitigated substantially, diminished largely if not eliminated, if there are understandings with respect to the production of that codeveloped aircraft, and clarifications with respect to what is needed in my view and in the view of the President of the United States. And discussions are ongoing with respect to those clarifications.

I think if those clarifications are forthcoming that in economic terms, at least, would satisfy the point you are making which I think is a valid point.

Senator RUDMAN. Thank you, Mr. Secretary. We will look with great interest at the final agreement when it is sent up. I don't have a closed mind on the issue, but I have been very concerned about it. I would say that there is a grave concern about the transfer of technology. But that doesn't concern me nearly as much as the trade issue with one of our largest trading partners.

Secretary BAKER. I would agree with that 100 percent.

VIEWS ON THE PLO

Senator RUDMAN. Mr. Secretary, last issue. I want to talk about the Middle East very briefly. As I said at the outset, although this is a hearing on your appropriation for next year, we do get an opportunity to talk about other issues.

I fully agree with the U.S. Government's decision to talk with the PLO. There are many who don't agree with it. I agree with it. I think that they are a factor in the Middle East; somebody has to talk to them. The Israelis for what they believe good and adequate reasons won't, and I think it is fine that we are.

But I have been a bit disturbed by some of the mixed signals that have come out of the administration in terms of the PLO, in terms of what Israel ought to do in the occupied territories in light of some statements by the PLO long after Mr. Arafat's declarations in, I believe, Algiers last year.

Even though I support you fully in your efforts let me just read two or three of them to you. On April 4 of this year, just a few days ago, Farouk Kaddoumi, the designated PLO Foreign Minister had an interview with the BBC Arabic service and said:

> The recovery of but a part of our soil will not cause us to foresake our Palestinian land. We will build our tent in those places which our bullets can reach. The extent of the Palestinian people's might well determine the location of this tent, which will then form the base from which we will later pursue the next phase.

Of course, everybody understands it when he says "the next phase". There is a well-known PLO doctrine—I am sure the Secretary is familiar with it—about what the next phase is. That is the destruction of the State of Israel.

Then this statement by Abu Iyad, also of recent vintage.

> There should not be any illusions as to the solution, whether through the United States or through an international conference. According to the phased plan, we

> will establish a Palestinian state on any part of Palestine that the enemy will retreat from. The Palestinian state will be a stage in our prolonged struggle for the liberation of Palestine and the establishment of a democratic state on all of its territory. We cannot achieve the strategic goal of a Palestinian state in all of Palestine without first establishing a Palestinian state [on part of its territory]. That is why there is no contradiction between the slogan of a Palestinian state and the slogan of liberation. The state will be a solid base for the revolution.

Now, there are about 25 or 30 other statements of recent vintage. It seems what I read as I get these translations from Arabic that they say one thing in Arabic and something else in English as if no one in the world can translate the two.

Senator BUMPERS. Would the Senator yield? Who are these people?

Senator RUDMAN. The second gentleman is Abu Iyad, who is first deputy to Yassar Arafat. The first gentleman is Farouk Kaddoumi, who is the designated PLO Foreign Minister. I have all sorts of statements furnished by a variety of sources in the Middle East and here in Washington. They are accurate, and I have confirmed that they are accurate.

Dealing with that kind of statement, don't we have to be very, very cautious in telling the Israelis what they ought to be doing with their own security?

Secretary BAKER. As you know, Senator Rudman, we are committed to a solution that provides, first and foremost, for Israel's security.

We are also committed to a solution that provides for Palestinian political rights. Statements such as those that you have just outlined, are not helpful. They are clearly not helpful. We would, we do look at statements such as that carefully, because we want to make certain that our dialog with the PLO is continued under the ground rules on which it was established. And that is a recognition of Israel's right to exist and a repudiation of violence.

So we continually look at statements such as that and have to make judgments accordingly. To date, we are satisfied that the PLO is committed to what it has told us; that is, that it recognizes Israel's right to exist and has repudiated terrorism in all of its forms.

Senator RUDMAN. I don't see how you can make that statement, Mr. Secretary, when the PLO Foreign Minister makes the statement he makes on April 4, which I have just read to you, which totally contradicts what Yassar Arafat said.

Are we saying that he is speaking without authority? Maybe you know something I don't—I am sure you know a lot of things I don't know. I guess that is my question.

Secretary BAKER. There are a lot of people out there who presume, from time to time, to speak for the PLO because the PLO has many dissident elements, as you know. And some are, frankly, opposed to the idea of any dialog with the United States. Some have not, in fact, renounced terrorism. We cannot, of course, expect the Arafat element of the PLO to control every dissident group out there.

Senator RUDMAN. Farouk Kaddoumi would not be part of a dissident group. He is the designated Foreign Minister saying——

Secretary BAKER. I would have to know, before I responded to a question with respect to that specific statement, under what circumstances it was made, where it was made, and whether he was presuming to speak for the organization, the PNC, the PLO. I mean, was he speaking in his own right? There are all sorts of things we would have to know.

Senator RUDMAN. I would be very happy to furnish you the source of this and three other rather disturbing statements. The particular one that I just read to you was translated from the Arabic service of the BBC on April 4, 1989, which is a few days ago, and I will send some others over to you.

I will conclude, Mr. Chairman, by simply saying that I support fully the goals of the administration. I just think we have to be very, very careful about the kind of pressure we bring to bear on that tiny State of Israel when we are talking about its security. We can trust the PLO's word, and if they break their word, well, our foreign policy fouled up. If the Israeli's trust their word, and the PLO breaks its word, they are dead. I guess if I were Israeli, I would feel very strongly about that.

I thank you very much for your answers. You have been very forthright, as you always have been, and we intend to work with you to help you achieve your goals in any way that we can.

Secretary BAKER. Thank you, Senator.

Senator HOLLINGS. Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman.

Mr. Secretary, to follow on from Senator Rudman's questions, do we ask Mr. Arafat to what extent he has the ability to offer programs on behalf of these dissident or splinter groups? Because, in fact, we give him particular status when we say that he speaks for the Palestinian people in terms of since they have declared a government in exile, that he speaks for all those people.

Doesn't he have an obligation, on the other hand, then, to be able to say to you and us that he will deliver statements from these various groups supporting his declarations?

Secretary BAKER. He simply doesn't control those groups, Senator Lautenberg, and it would be unrealistic for us to say, "You must deliver statements to controlling groups you don't—" I mean——

Senator LAUTENBERG. Exactly, Mr. Secretary, so what we do is we place Israel in the position of having to respond to someone who doesn't have the authority to deliver a peaceful negotiation. We further install Yassar Arafat with a standing that he obviously doesn't have, and you say he can't deliver those elements.

Then what we do by meeting with him is saying, "Well, OK, violence may continue; repudiation of Israel's right to exist may continue, but we, the United States, are going to continue with our dialog and discussion."

At some point, don't we have an obligation to say, "Look, if you can't control them, you don't have the standing to represent the Palestinian people, these people who want to get on with the normal life"?

Secretary BAKER. Senator Lautenberg, I think that our view is that he does control or that that organization does control the majority of the elements of the PLO. There are some dissident elements resident in Syria, for instance, that are not controlled by the Arafat element of the PLO.

STEP TOWARD PROGRESS

Senator **Lautenberg**. We are kind of going around in circles a little bit on this, and I know that you are very serious and very committed to helping them create a peaceful climate. Unfortunately, the discussions with the PLO, in my view, have not done that.

What it has done is kind of supported the fact that, "Well, if you can't control them, then whatever takes place is kind of part of the equation."

Secretary **Baker**. I suggest that one thing you may be overlooking is the significance of what happened here last week. The Prime Minister of Israel came to Washington with what we perceive as a very encouraging suggestion that had, certainly, some new elements and new features to it.

He said in the course of his statement, Senator, that—I think the words were—"In order to launch a political negotiation, we should start talking about elections in the occupied territories."

That was new, and that was different. I think that is significant. He also said that the elections would pick individuals with whom Israel would be willing to negotiate transitional arrangements. But he also recognized in the text of his statement that that would then ripen into negotiations respecting, I think he said, a permanent agreement or permanent status.

And he also said that in those decisions involving permanent status, all options should be considered. We think, Senator Lautenberg, that this is progress. It may be a small step. It remains to be seen whether it can be converted into something more than a small step. It is certainly a very useful first step. It should be explored. It should not be rejected totally categorically out of hand, and I would suggest to you that the fact that the United States has some sort of dialog in place, or machinery in place for a dialog, could be usefully utilized to perhaps make some progress toward peace.

We are talking about a situation that, as you know, is extraordinarily difficult and intractable. We haven't had peace there for many, many, many years, and it is going to take the good-faith efforts of parties on all sides if we are going to get there. We encouraged President Mubarak; we encouraged Prime Minister Shamir; and we will encourage King Hussein when he gets here; to preserve as much flexibility as they possibly can so that this opportunity may be explored and, if possible, capitalized upon.

Senator **Lautenberg**. Mr. Secretary, the Prime Minister of Israel also put down another condition, and that was provided the rioting stops. Now, I haven't heard that discussed here; I haven't seen statements from the administration or the State Department saying that the rioting should stop, must stop, because if we buy the——

Secretary **Baker**. I will be glad to respond to that for you. Let me tell you our view. We talked at length with the Prime Minister, as we did with President Mubarak, about how the details and the modalities of any election are going to have to be worked out between the parties.

There are many questions, Senator Lautenberg. Should there be any international supervision of elections? Who is eligible to vote? What about Palestinians living outside the territories? What exactly will be done by way of transitional arrangements once you have some representatives elected from the occupied territories?

To what extent must there be peace or at least nonviolence before the election is conducted? Our view is it is pretty difficult to conduct an election in an atmosphere of violence. So clearly that is another reason why we were saying even before these visits there must be some reciprocal steps taken on the ground. The parties themselves have got to improve the atmosphere and the climate before you can reasonably expect to get to negotiations.

But, surely, there has to be a greater degree of calm and tranquility than there is today before you get to elections. Does that mean that you have to have that before there can be any discussions between Israelis and Palestinians about the fact of elections? We don't think so.

Senator LAUTENBERG. I have never heard better statements against the support of violence than you make or than you are making now. But I would submit to you that meetings with the PLO and their involvement in the riots don't seem to me to be consistent with our objectives.

This is not an accusation, by the way. I am not suggesting anything like that. We are disagreeing on the policy and, frankly, I think what we do is we perpetuate these things by our meetings with the PLO.

REFUGEE RESETTLEMENT

Mr. Secretary, before the chairman brings down the gavel, I have just a couple of quick questions on refugee resettlement. One is, you have asked, as I saw in your statement, for, I think it is, a $100 million supplement for refugee resettlement this year. Am I correct? It was $85 million?

Secretary BAKER. That is correct. $100 million.

Senator LAUTENBERG. And for the 1990 budget, it was some $100 million?

Secretary BAKER. It is $370 million for 1990.

Senator LAUTENBERG. But it was $100 million; am I correct?

Secretary BAKER. We are asking for a fiscal 1989 supplemental of $100 million.

Senator LAUTENBERG. And included in the request for 1990, how much is there for Soviet refugee resettlement? There is a special appropriation being sought because of the surge in numbers and emigrant visas that may be available.

Secretary BAKER. Of the $100 million supplemental, $85 million is for refugee admissions and $15 million for refugee assistance. The $85 million for admissions funds an additional 28,500 admissions, which include 24,500 Soviet admissions from Rome and Moscow. So the vast majority of it is for that.

Senator LAUTENBERG. I am concerned about the impression that we create by saying to the Soviets, "Lighten up, loosen up your hold on people who wanted to emigrate; let them pursue their religious interests," and when that takes place, we don't have the facility nor the funds to accommodate that emigration or that immigration here.

I would hope that we will have the support of the State Department in securing funds and in training personnel who meet with these emigres to expedite the process. There are people holed up in Italy waiting for entry into the United States, and we do need a special refugee category for those religiously persecuted.

Mr. Secretary, I hope that we will have the help from your Department. Senator Kasten has introduced legislation, and I suppose others, to try to provide funding for resettlement through that surge in opportunity for the United States to truly hold out its hand to these people who want to escape religious oppression and come here.

Thank you very much, Mr. Chairman. We will submit additional questions in writing. I assume the record will be open.

Senator HOLLINGS. Right. The record will be open, and the Secretary will accept those questions.

Senator Bumpers.

INFLUENCE OF LEADERS

Senator BUMPERS. Mr. Secretary, let me just make a general statement and ask you to respond with however much specificity you want to get into. But I am concerned. I have always felt that you don't need to be a rocket scientist to be President, but you should be courageous and willing to be bold when the occasion calls for it.

In my lifetime, we have had men like Franklin Roosevelt, and I grew up in a household where we were taught that when we died, we were going to Franklin Roosevelt. There were people like Sadat who were willing to, and did, in fact, sacrifice his life for a noble cause, and now we have Mikhail Gorbachev, who I think sort of fits in that same mold.

I don't think you or I or anybody around this committee or in the Congress doesn't believe that he isn't a different kind of a leader, and I think that our future—not so much economically but militarily and as far as the peace of the world is concerned—is tied rather inextricably to his future. Sovietologists, for example, like Marshall Schulman say that he won't be around a year from now.

With the utmost respect to Marshall, Sovietologists are not very right about these things, and I am happy about that. But before President Reagan left office, he says that we had become so strong as a result of our massive military buildup that we had forced the Soviet Union to the bargaining table and got the INF Treaty.

When Gorbachev comes to the United Nations then and says, "We are going to dismantle, we are going to disarm 500,000 men," which, incidentally, creates real internal problems, both for the military and economically. That is an awful lot of people suddenly without command—a lot of people without jobs, and he makes what I thought was a real statesmanlike speech.

Now, we are a big, strong, grown-up Nation. We don't have to be naive. We don't have to unilaterally disarm. We don't have to be any of those things, but I believe that we ought to be confident enough to do two things: No. 1, take those things under consideration in a serious vein; and No. 2, see what, if any, response would be important, recognizing that Gorbachev, just as any Soviet leader, does not do these things to accommodate us. He is making a virtue of necessity, literally.

Secretary BAKER. That is right.

IMPORTANCE OF GORBACHEV'S SUCCESS

Senator BUMPERS. So they are not doing that, but in the White House the other day, at least in the paper, I saw where all of this has been under review and there was a story, I believe, in the Times or the Post—I forget which—where perhaps you and Scowcroft and others have given the President some suggestions and maybe a paper that has been under consideration for some time as to what our response ought to be.

No. 1, do you agree with me that it is to our advantage for Gorbachev to make it?

Secretary BAKER. Is that the question, Senator?

Senator BUMPERS. That is the first question.

Secretary BAKER. Absolutely, as I have told each and every one of my counterpart foreign ministers in the North Atlantic Treaty Organization, and as I have said publicly on a number of occasions.

ISSUES UNDER REVIEW

Senator BUMPERS. The second question is: Would it be appropriate, even though, as I say, we are not doing this to accommodate the Soviet Union; we are doing this to accommodate, and it seems to me that we could be doing some things that would certainly help his position, and I just don't believe there is any creative response or any boldness right now out of this administration in doing that.

So my second question is: What would be wrong, for example, for us saying because we are about 47 MIRV'd launchers above the SALT II Treaty, and the defense intelligence community has just issued a statement very recently that the Soviets are still scrupulously complying with the sublimits of the SALT II Treaty, why couldn't we just say that we are going to come back in compliance?

What difference does it make whether we have 1,357 launchers or 1,320, which puts us in compliance, except just as an irritant?

Secretary BAKER. Senator, I am not going to respond to that question, because we are still in the process of reviewing some of the issues that the President wants reviewed and which I think even the Soviets themselves agree we should do as a matter of prudence.

I think we have said that we are going to approach this relationship with prudence and realism, but the President has been very out front in saying that he wants to build on the progress that has been made to date.

It is my sense that we will never get out in front of Mr. Gorbachev in so far as unilateral reductions in——

Senator BUMPERS. I wouldn't suggest that myself.

Secretary BAKER [continuing]. In weapons are concerned, and I know you are not suggesting that, because the imbalance is just too great, particularly on the conventional side.

So the question you have just asked me is one that is wrapped up in a review that is ongoing. And it is not one on which I ought to even express a personal opinion.

Senator **Bumpers**. Who does the head of the Arms Control and Disarmament Agency report to, you or the President?

Secretary **Baker**. The legislation provides that the head of the Arms Control and Disarmament Agency is to give the President the benefit of his or her independent views with respect to arms control matters. So that person attends National Security Council meetings and expresses independent views.

There is a reporting line to the Secretary of State for administrative matters and things such as that. So it is sort of a joint reporting responsibility.

HUMAN RIGHTS IN SOVIET UNION

Senator **Bumpers**. Third question. Has the administration considered not a repeal, but the possibility—and it seems to me that this would be beneficial to both the Soviet Union and the United States—the possibility of a 6-month to 1-year waiver of Jackson-Vanick?

Secretary **Baker**. The issue has been discussed, not in formal administration policy meetings, Senator Bumpers, but a number of people have from time to time raised it. It has been raised up here in the Congress. So we know that there is discussion ongoing about that.

Let me say that the advocacy groups, the groups that were the most interested in seeing the Soviet Union lighten up a little bit on its immigration policies and show a little greater respect for human rights, I think, might be inclined to support a loosening of Jackson-Vanick at a time when the Soviets have institutionalized in law some of the procedures that they are now following as a matter of fact and practice.

Senator **Bumpers**. Mr. Secretary, let me say on that last point, I tend to agree with you. I think there has been dramatic progress made on human rights in the Soviet Union, but you are correct. It is not codified into law yet, and I must say, I think that is causing some confusion among the people of the Soviet Union as to what they can and can't get by with.

Secretary **Baker**. I think that is right.

Senator **Bumpers**. So I understand that, but it seems to me that that certainly ought to be a very serious negotiating point with us, because I think it would help. I also think it would help them speed up the completion of this very liberalized policy that at least Gorbachev espouses in all of his statements.

SOVIET INFLUENCES

Secretary **Baker**. May I amplify on my first answer to you? I told you we agreed with it. I agree with you totally with respect to the importance of success on his part. We think that would be good for the United States and good for the free world, and that it would result in a more stable and secure Soviet Union.

At the same time, I need to state what I think is our established policy, Senator Bumpers, that in our view, success or failure by Mr. Gorbachev will depend on what happens in the Soviet Union and not really what happens in the West. That is not to say that we should adopt an obstructionist attitude or position, and we don't.

We do want to build on the progress that has been made in arms control. We want to build on the progress that has been made in resolving some regional conflicts. That is why, if I may say so, we are so disappointed in the approach and attitude of the Soviet Union with respect to Central America and the funneling of $1 billion in aid to Nicaragua, notwithstanding the fact that the United States has cut off support, particularly military support, to the resistance.

But we think that his success will depend, really, on what happens there, and not on what we do in the West. We don't think there ought to be a headlong rush toward concessionary economic grants, if you will, to the Soviets; that we ought to follow the rules that were laid down at the Toronto Economic Summit last year; that ordinary commercial relationships are something the alliance should tolerate, but that we ought not to be caught up in a headlong rush in order to do business with the Soviet Union, a headlong rush toward concessionary lending and grants and aid and that sort of thing.

Senator BUMPERS. Mr. Secretary, I am suggesting everything in the world except a headlong rush.

Secretary BAKER. Any rush.

Senator BUMPERS. You know, if you study people like Barbara Tuchman you see so much timidity right now at a time when the whole world is in a state of dynamism and change, and we are sitting here debating whether to build the MX or the Midgetman when the rest of the world seems to sense this dynamism and sense this dramatic change that is going on better than we do.

Secretary BAKER. Senator, I am not going to argue that with you. I think it is probably true that there is a great deal of dynamism and opportunity out there. But it is opportunity that has been created because we have been resolute, because we have been prudent, and because we have been realistic in our dealings with the Soviet Union. And I think those principles ought to guide our future dealings.

RESUMPTION OF START TALKS

Senator BUMPERS. I couldn't agree more, Mr. Secretary. I am not suggesting that we not be firm in our commitments to what we believe, including human rights. I am not suggesting that we rush headlong into making economic concessions to the Soviet Union. I am simply saying that when you study history, you find that all the disasters of the world were because timid politicians didn't seize opportunities when they presented themselves.

I am just saying that 1 year from now, if the Ligachevs and the detractors take over, I can't think of anything worse happening to us.

So we are not trying to make a virtue out of necessity just for world opinion. We are making virtue out of necessity for ourselves by trying to dissuade those who would otherwise be detractors by saying the United States is talking sense, and they are negotiating.

I will be quite candid with you, Mr. Secretary. I think one of the reasons we can't make up our mind on strategic weaponry is because we don't know what it is we do want. And we can't go to the

START talks and really talk sense until we know what kind of a mix we want with our own strategic weaponry.

Secretary **Baker**. I think we have to know what kind of a mix we want with respect——

Senator **Bumpers**. Before we negotiate.

Secretary **Baker**. And we should.

Senator **Bumpers**. Why aren't we doing that?

Secretary **Baker**. We shouldn't be negotiating until we have completed our strategic modernization review. That is what we have ongoing. It would be a mistake to sit down, to sit back down at the START table until we have completed that. That is scheduled for completion toward the end of April or the 1st of May. That has always been the schedule. We have told the Soviets that. They understand it. They have told us they understand it.

I will tell the Foreign Minister that again on the 10th and 11th of May when I get to Moscow. So, I mean, we are being as open and above board with respect to that as we can be. But it is prudent to complete that review before we talk to them.

Senator **Bumpers**. Of course, it is. Of course, it is, and you have got some big decisions to make on SDI.

Secretary **Baker**. Big ones, big ones, and we have only had, if I may say so, a Secretary of Defense for 2½ to 3 weeks. We are not dragging feet here. We are going to complete that review; it is going to be completed, I would say, certainly by the middle of May.

Until we complete that review, we really are not in a position, should not be in a position, to discuss with the Soviets exactly what our negotiating stance will be in the resumption of START talks.

SUBSTANCE AND PUBLIC RELATIONS

Senator **Bumpers**. Mr. Chairman, just to close with a short statement. But first, let me compliment you, Mr. Secretary, on your request. I intend to support your big increase in international organizations.

I am happy you made it, and that is a real departure from what we have been getting up here, and I thank you for that. But in my opinion, we are not going to be able to deal with the budget realistically and come into compliance with the troika, Gramm-Rudman-Hollings, unless defense has to take something less than even real growth. I am just telling you, I don't see how you can do it.

When the President in his campaign said, "No increase in taxes; no cuts in Social Security; no cuts in defense," that is tantamount to saying, "I love deficits, and I hope we go on forever." So I think that defense is going to take a hit. I don't know how big, but all I am suggesting is there is a place where you can make a virtue out of necessity.

For the President to say, "Yes; I'm sorry. We are not going to be able to do quite what we wanted, but I promise you, we are not going to let our defenses down. We are going to live within this and we are going to keep our guard up, and we are going to be strong," and so on. But it seems to me that there would be a golden opportunity for a little PR to say that to the whole world.

You know, it troubles me. It troubles me when in Britain, Gorbachev has double the approval rating of President Bush, and the

Germans are saying, "No; we don't want the modernized Lance on our soil." It seems to me we are losing ground and the rest of the world is seeing this in an entirely different light.

This is not a lecture, Mr. Secretary.

Secretary **Baker**. No, no, no; I understand that. What you have just said is true perceptually, Senator. But the fact of the matter is that on substance, we are winning across the board. We are winning politically; we are winning economically. The other system has been declared to be a failure by the proponents thereof.

Senator **Bumpers**. And Gorbachev is saying it is a failure. He is saying it is a failure.

Secretary **Baker**. But I guess what I am saying is, there is no way that we are going to be able to outbid the Soviet Union in unilateral arms reductions, because they have a——

DEBT BURDEN IN LATIN AMERICA

Senator **Bumpers**. Please don't leave with that impression. I have said repeatedly, that is not what I am suggesting.

Mr. Chairman, with your indulgence, let me raise one other point. Some of us visited with President Sarnay and President Perez last week and we went down to camp out in the Amazon. I enjoyed about all I could stand. I said that I had never slept in a hammock before, and I still haven't. [Laughter.]

Let me say that we went down there to talk to the Brazilians. We were spitting cotton when we got there about the tropical rain forest there, and I think we left a pretty good taste in their mouths. We tried to be as diplomatic as possible.

But I can tell you, they weren't nearly as interested in talking about the tropical rain forest and its future as they were about their debt. Now I know that you are putting that on the front burner, and I appreciate that, but when you go there and you listen to the presidents of those two countries—and I might say, I think Perez may be the leader in Latin America, the most charismatic and articulate—but I am telling you, so far as they are concerned, all the embryonic democracies in Latin America are hinging on whether we deal with that in a meaningful way or not and help them survive.

Secretary **Baker**. It is very important. And we have, I think President Bush has, recognized that, Senator. That is why you have the proposal that Secretary Brady presented on March 10 that emphasizes to a much greater degree than we have before the merits of debt reduction.

But it is not a magic bullet cure. And let me just say one more time that the most important thing the leaders of those fragile democracies in Latin America can do—and their survival is of great importance to the United States from a geopolitical standpoint, you are absolutely right—is to start pursuing the free market economic policies that have proven themselves, that have been proven to work around the world.

I mean, that is what they need to do. They need to privatize; they need to free up their investment; they need to get rid of all these state enterprises. And so it is not just a case of removing the debt burden. If the debt burden were the only problem, Senator, Peru would be a thriving economy today instead of a basket case, because they haven't paid a dime in 6 years, or 5. They just basically said, "We are going to stop paying." So they have eliminated their debt burden.

Senator **Bumpers**. The Venezuelans are not going to pay either.

Secretary **Baker**. My point is this: You have got to find the right mix of economic reform and relief. Relief is appropriate, but you can't have relief applied or implemented in a way that cuts a country off from access to sources of private financial capital. They must have that capital to grow.

Senator **Bumpers**. Venezuela is in a very tough spot. They need a $2 billion bridge loan. At the same time they are saying, "We are going to renege on the $35 billion we owe."

Secretary **Baker**. They are in a tough spot. President Perez rode back from Atlanta with me the other day. We spent an hour and a half talking about it. He is now engaged, or he and his people are engaged, in discussions with the Treasury.

That is a very good candidate right there for application of the principles that were announced by the Treasury on the 10th of March. Negotiations are ongoing. But they are just that; they are negotiations. And in each one of these cases, there will have to be negotiations. The parties will have to banter back and forth until they arrive at some sort of an understanding. Mexico is, likewise, an important candidate.

Senator **Bumpers**. Thank you, Mr. Secretary, and thank you, Mr. Chairman.

Senator **Hollings**. Senator Gramm?

Senator **Gramm**. Mr. Chairman, let me say, having listened to all of this, that where I am from, the last thing we do when a fellow can't pay his bills is to lend him more money. I would rather have countries that generate money than countries that have charismatic leaders.

Charisma buys you nothing either on the world market or in Cut-and-Shoot, TX. That is the way it should be in my mind.

Also, I would like to be sure that somebody remembers where all this talk about dynamism came from. In 1980, we were losing the cold war.

Secretary **Baker**. That is right.

Senator **Gramm**. We were on the retreat all over the world. Today, everybody is talking about us winning the cold war. I think we ought to remember why that is so. It is because we rebuilt our defenses; because we reasserted our position of world leadership and because we resisted protectionism and kept this trade-based, capitalistic, wealth-creating machine that worked.

Secretary **Baker**. Amen.

Senator **Gramm**. If we are going to get amens going, it should be a good session. In my mind, we ought to keep doing those things, and I know you agree with me.

DEALING WITH THE PLO

Mr. Secretary, I want to make just a few comments on some of the things that have been said, and then I have a mundane little thing about money.

First of all, I know you didn't come in off a turnip truck, and I am not worried about you trusting the PLO. I don't trust the PLO. I can't look in their hearts, but I don't believe their objectives have changed, and I am not worried about you getting confused. But some of these guys in the State Department, I don't know whether they came in off a turnip truck or not. I want to ask you to please keep a leery eye on dealings with the PLO, who for a quarter of a century, have engaged in terrorism against the people of Israel, against our people and against people all over the world. I am certain you are going to do that, but I wanted to get my lick in with Senator Rudman.

BUILDING THE FSX

With regard to the FSX, in an ideal world, I think the Japanese should have bought the upgraded F-16, and so far as I am aware, we pushed hard for that. Their initial objective, as I understand it, was to build their own fighter as they built their F-1. They are beginning to ramp down on the coproduction of the F-15, and they want to keep that segment of their economy alive. So the compromise is the licensed building of the FSX using a lot of F-16 technology.

Secretary **Baker**. That is right.

Senator **Gramm**. I just would like to say, Mr. Secretary, that while I think we ought to push for the best bargain as we can get. I think the worst outcome would be for the Japanese to decide to go it alone, to not buy our technology under license, which they can't sell elsewhere in the world, to build an inferior fighter at a higher cost and then go out in the world and compete with us in selling it.

So I hope you will push a hard bargain, but I hope we don't push so hard that we produce that absurd result.

Secretary **Baker**. Thank you for making that point, Senator Gramm.

ALTERNATIVE USE FOR MOSCOW EMBASSY BUILDING

Senator **Gramm**. Another thing I wanted to mention was that I have been to Moscow and have seen the Embassy building and seen all the little gadgets in it. Maybe it is because I am cheap in spending the taxpayers' money, but it hurts me to think of tearing down this building. I have to believe that we could find some use for it, whether it would be a gym for the Marines so that all the Russians could listen to people grunt—[Laughter.]—or whether it is housing or whether we might want to put some ~~kind of~~ peace delegation in there which would have nothing of any value to say that can be heard. [Laughter.]

But I hope one of the options that you will look at is to try to find an alternative use for this building. To tear it down just because it has got a few bugs in it when we spent so much money building it, pains me a great deal, and I have to believe that there is some alternative use for it.

I would like to get your commitment that you will at least look at some options.

Secretary **Baker**. I think I said in answer to the chairman before you got here, Senator Gramm, that there are a lot of options out there, that reasonable minds can differ. We have just seen a demonstration that reasonable minds differ; you and the chairman differ on which approach we ought to take.

We are going to look at all the options. We are not going to waste a lot of time. We are going to come up here and tell you what our preferred option is, consult with you, and go on down the trail from there.

UNITED STATES/MEXICO BORDER SEWAGE PROBLEM

Senator **Gramm**. Finally, let me get to my question. Mr. Secretary. We have, as you are probably aware, along our international border with Mexico a terrible pollution problem, and let me just give you one index of it. Five miles below the twin cities of Laredo and Nuevo Laredo, the level of pollution is 1,400 times higher than the highest level of pollution when it is safe to come into contact with human skin. We are not talking about drinking the water; we are talking about touching it.

Now, the problem is, people on the Mexican side are drinking out of the river, but we are having a growth of population along the border on both sides of the river. The pollution problem comes primarily from the dumping of human sewage into the river on the Mexican side. We adopted a bill last year to set up an engineering study under the International Boundary and Water Commission. They have come up with a plan to clean up the river, beginning in Nuevo Laredo, jointly funded by the United States and Mexican governments. The first installment was $7.5 million in the Reagan budget.

I wanted to ask you if, so far as you are aware, the Bush administration is still supporting that effort.

Secretary **Baker**. Yes; it is, Senator Gramm.

Senator **Gramm**. Well, I just wanted to emphasize, Mr. Secretary, that it is vitally important. So far as I am aware, it is the worst pollution problem in North America. It is a very real problem, because, as you are aware, we have got lots of people living along the border. The river is an important recreational source, and we have finally worked out an agreement with the Mexicans where they are willing to put up their money to do something about the problem. I think it is very, very important that we not let this opportunity pass with a new president in Mexico who claims he wants to help us deal with the problem.

So I would certainly appreciate your strong support for this level of funding. The total project over an extended period of time is only $44 million. Our share this first year is $7.5 million. The State of Texas is putting up money; the Mexican Government is putting up money. It is a very important project, and I wanted to recommend it to you.

Secretary **Baker**. Thank you, Senator Gramm. It is in our fiscal 1990 request. Actually, we are reviewing now, I am told, the possibility of coming up here and asking you to reprogram some 1989 funds to get it started. But we haven't made a determination to do that yet.

Senator **Gramm**. I would appreciate that, because it is a very real problem. There are so many health problems on the Mexican side, it is hard to identify where they are coming from. On our side of the border, we have not had a public health crisis as a result of the pollution yet, but it is only a matter of time until that is going to happen.

Secretary **Baker**. Yes.

Senator **Gramm**. So I appreciate your attention.

Thank you, Mr. Chairman.

Senator **Hollings**. Thank you, Senator Gramm.

Senator Kasten.

QUESTION OF PLO MEMBERSHIP IN UNITED NATIONS AND RELATED ORGANIZATIONS

Senator **Kasten**. Mr. Chairman, thank you. I want to begin by echoing some of the statements that have been made regarding the PLO. I think it is very important that we judge the PLO not only on their words. It is one thing for someone to stand up there and read the right three paragraphs and you finally got it right, and then that started this process.

But since then, there have been words that have been to the contrary, but more important, actions. I think that we have got to develop a way, working with you, to judge the PLO on their actions and not simply on their words—that might come out of a press conference or a press release.

With that regard, Mr. Secretary, the PLO and several countries are now seeking recognition for the PLO as a member state in the United Nations and related organizations and agencies.

This week, a number of us sent a letter to you regarding this question. First of all, do you have any suggestions on how we can stop this effort of the PLO that they are now making in the United Nations, and what will you do in terms of using means at your disposal to discourage this development?

Secretary **Baker**. Senator Kasten, I am sorry. I don't have that letter here with me and was not aware that it had come in. Did you just send it recently?

Senator **Kasten**. We just sent it recently, that is right.

Secretary **Baker**. Like yesterday?

Senator **Kasten**. But the issue is one that—actually, it could have been yesterday.

Senator **Gramm**. He mailed it yesterday.

Secretary **Baker**. Oh, he mailed it. Let me respond when I——

Senator **Kasten**. I am not saying that you didn't respond to our letter. I am not sure if you should have the letter by now, but the point is, the issue of the PLO seeking recognition as a member state in a number of these related organizations, what are we going to do about this, and what is your position? What can we do to work together?

Secretary **Baker**. I will get back to you as soon as I have a chance to look at your letter, Senator.

Senator **Kasten**. You are saying that you are not sure if you will support the PLO as a member state?

Secretary **Baker**. I am not even sure whether there has been an application. I don't want to answer the question in a vacuum. I don't know what they are seeking to do; what they have applied to do. So I just don't have the facts that I need in order to answer the question.

I will be glad to get you an answer maybe tomorrow morning or this afternoon, but I would like to see what the facts are before I answer.

Senator **Kasten**. Well, as a general principle over a number of years, the most recent being in the International Agency for Atomic Energy, there have been questions with regard to membership of groups like the PLO and the way that they use membership in these agencies and organizations in order to establish their so-called legitimacy.

Secretary **Baker**. Sure, I understand that.

Senator **Kasten**. Generally speaking, the position of this administration, and I would say that when Ambassador Jean Kirkpatrick was Ambassador to the United Nations, the issue was more focused clearly. Generally speaking, the position that we have taken has been strong opposition to the PLO.

Is there any understanding that that policy is about to change?

Secretary **Baker**. No; and I don't mean to suggest that by not answering your question. It is just that I want to find out what it is they are trying to do, what is involved, and then I will be delighted to answer your question.

But by doing that, I don't mean to suggest that policy is going to change or anything else.

Senator **Kasten**. We will follow back up on that.

Secretary **Baker**. Yes, surely.

FUNDING REFUGEE PROGRAMS, 1989–90

Senator **Kasten**. I would like to take a minute now to talk about an issue which has been of great concern to a number of members of this committee, because we have both the Justice Department and the State Department under our jurisdiction in this committee, and the issue involves the whole refugee question that Senator Lautenberg and others have brought up.

The supplemental which you mentioned at the Foreign Operations Committee hearing a couple of weeks ago has been sent up, $85 million, which will be for admissions; $15 million would be for assistance. I applaud the administration for sending that supplemental up, and I think that it deals with at least part of the problem which is an explosive problem and a difficult situation not only in Rome but also in Vienna and also in the Soviet Union.

I am concerned, though, that the administration has yet to fully respond to the problems that we have in Rome, and one of the problems that we have, Mr. Chairman, is that although the State Department supplemental went forward, there was no increase asked for the INS in Justice.

Mr. Secretary, I am asking you now a question about the Justice Department, but this whole effort has been coordinated and, I think, led by some of your people. I know it is not under your jurisdiction, but I think that I simply want to point out that there is a very clear need for an INS supplemental for the Rome operation and for some reason, the administration decided not to seek such a request.

Are you aware of this shortcoming, Mr. Secretary?

Secretary BAKER. To answer your question, Senator Kasten, I am not aware that there were discussions with the INS about a supplemental. I didn't have any. The answer I have received here tentatively, at least, is that INS would handle their funding needs through reprogramming within their current resource levels.

So I suppose our view at the State Department is that maybe an INS supplemental is not needed. But I have to tell you, I haven't had any discussions with Justice about that.

Senator KASTEN. OK. Well, I am leading down to a point where I am going to talk a little bit about the overall coordination and management of this whole question and problem, but I just want to go through one more series of questions.

Senator Lautenberg pointed out the funding questions, but he didn't ask what I think is the key question. Now, with $100 million in the supplemental, we will be spending in fiscal year 1989 $511,950,000 this year for this overall program.

Secretary BAKER. Right. And the money we have in the fiscal 1990 request, therefore, is not going to be sufficient.

Senator KASTEN. The money in the 1990 request is $380 million compared to $511 million.

Secretary BAKER. You are absolutely right.

Senator KASTEN. Now, that means that we have got to deal with that question and problem here. My question to you is: Can we anticipate a fiscal year 1990 amendment to the President's budget that you will submit so that we know where we are going with these refugee programs and problems? Are you going to ask for $511 million, or are you going to ask for $500 million?

Secretary BAKER. I can't yet tell you what we are going to ask for, Senator Kasten. But I believe it is our view that we will have to come in with a supplemental or an amendment so that we can deal with the increase for refugees.

Senator KASTEN. But you agree with me that the $380 million request which is presently in the budget is not likely to be adequate for the needs.

Secretary BAKER. It is not likely to be adequate unless the Soviet Union's policy changes, and I believe I testified to that effect over on the House side before the subcommittee over there. That assumes, of course, no policy change, Senator Kasten.

COORDINATOR FOR REFUGEE AFFAIRS AND DIRECTOR OF REFUGEE PROGRAMS

Senator KASTEN. I understand, but we have gotten trapped here, and I just don't want to get trapped again. That is a big difference in terms of what may be needed and requested.

Now, we have talked about the organization of this overall area. I am very seriously concerned, as I have said to you privately and publicly, about the same person in the Department of State effectively having two jobs. Now, this actually is appropriate for this subcommittee to be discussing. Jonathan Moore is the first individual that has had two jobs. Previous to that, we had two people in these different jobs. You have got a person holding the two jobs and the two jobs are the Ambassador at Large and Coordinator for

Refugee Affairs. That is one job. And the other is the Director for Refugee Programs. That is the second job.

Now, I have asked questions in writing to the State Department and we have gone back and forth, and there has been a misunderstanding. I am not the only one that is interested in this issue—I am not trying to separate the Ambassador at Large and Coordinator for Refugee Affairs position. That is one position.

But the other position, the Director of Refugee Programs is the position that I believe needs to be filled by someone who has had at least some experience at one time in their life with refugees. I would hopefully have in it a person who would be an expert.

Now, we go through the State Department directory. On page 1, you have the Ambassador at Large position. On page 50, you have got the Refugee Programs and Director Jonathan Moore. So you recognize in your directory you have got two different positions.

Secretary BAKER. Filled by one person.

Senator KASTEN. Filled by one person.

Secretary BAKER. That is correct.

Senator KASTEN. Now, do you intend to fill both of these positions by one person again?

Secretary BAKER. As I have told you privately, Senator Kasten, and I will now confirm publicly, the answer is yes, because the President, in talking to his appointee about the job, agreed with her that she would have exactly the same duties and responsibilities as Ambassador Moore has, and therefore, she would wear both hats.

It is a matter that has arisen. It has been discussed. The President of the United States has talked to his designated appointee about it. So I believe we have passed the point of whether or not we are going to talk about two different positions.

Senator KASTEN. Mr. Secretary, I want to say very strongly that I don't think it makes sense to have one individual as a coordinator and to have that position also as one of the people that she is supposed to or he is supposed to be coordinating, and I also don't think it makes sense, particularly because of the questions I had leading up to this question.

We have serious problems in this area. I didn't even discuss what is happening in Central America and in Texas and the border States, and I didn't discuss what is happening with regard to Thailand, Cambodia, the Vietnamese, and the Mong people coming in. This is a major, major problem area.

Secretary BAKER. We do have major problems, Senator.

Senator KASTEN. It simply doesn't make sense to me to have the same person in both jobs, especially with that person not having had any experience at all in this area. So I just want to suggest to you that in discussions I have had with my friends and my colleagues that I hope that we can reconsider this.

There are a number of people that are concerned enough about this that there may be discussions or interest in slowing down this whole nomination process until we get it figured out. I hope we don't get there. But it really needs to be figured out.

Secretary BAKER. I hope not, either, Senator. I guess my point is that those discussions will have to be ongoing at more than just the State Department.

Senator **Kasten**. Mr. Secretary, I understand.

Secretary **Baker**. It will have to involve the White House. That is the point I want to make to you.

Senator **Kasten**. I understand that, and I think that all of us who share these concerns, and I know you do, too, can work together, and hopefully, we can work this problem out.

Mr. Chairman, thank you.

Senator **Hollings**. Thank you very much.

Senator Adams.

Senator **Adams**. Thank you, Mr. Chairman.

Mr. Secretary, it is nice to see you again.

Secretary **Baker**. Thank you, Senator.

USE OF MOSCOW EMBASSY BUILDING

Senator **Adams**. I am sorry that Senator Gramm is gone, because I wanted to agree with him publicly in his statement on the Moscow Embassy. Mr. Chairman, I haven't had a chance to discuss this with you, but I, too, have been in Moscow recently and spent a number of days there. I have been all through that Embassy, and I would plead with you Mr. Secretary, as Senator Gramm has done, not to just tear that building down.

That building has devices in it that are 15 to 20 years out of date, and I ask you, before making a decision, to bring in the modern technology people that are involved in security so that they talk to you about parabolic reflectors and other intelligence devices. Use the building for visas and all the other things the State Department does, because you cannot make an entire building secure, Mr. Secretary, as many people think you can. You can make rooms secure, sections secure, but you just simply cannot make a whole building secure.

I just want to save us a little money and do a practical thing. I would like to talk to all of you when you get to a decision. I am a little shocked when people that think some of the stuff that they had there has been used very significantly in the last 15 years.

Secretary **Baker**. Senator, I don't think you were here when I said that reasonable minds can differ on what we ought to do with the Moscow Embassy. And now you are the third reasonable mind that has adopted a different approach.

Senator **Adams**. I just heard the end of Senator Gramm's statement. That was the reason I wanted to just let you know that a lot of us have been there and looked at that issue, and we hope we all will reason together.

ARMS REDUCTION DISCUSSIONS

The second point is this: I was on the Foreign Relations Committee last year; spent a great deal of time not only in Moscow, but I will be with a NATO group this fall and will be in Yugoslavia in August. I hope that there is a feeling on your part, and I want to state this on the public record, that perestroika, which we have all read and examined, and glasnost are not just a product of our activities.

Our activities may have had an effect, but the Soviets have reached a conclusion that I am hopeful we are arriving at from a different direction in this country; that a very superheated arms race between superpowers can make both of us into less competitive economic powers and that everybody else in the world is stealing a march on us.

This is not to tell you how to run your business, but from conversations with people in Leningrad, Kiev, Sigorsk, all over Russia, there is a recognition that you can't have a dirt road system and no infrastructure in the Soviet Union and spend all this money on military and expect that you are going to remain a major power.

The reason I state that is because a power that cannot compete economically and is not a part of the world community in some fashion and becomes isolated with a huge military capacity is incredibly dangerous, and we view that as happening. I am hopeful, and I think there has been great progress, and I have great hopes for you. And I want you to know a number of us will support you in those efforts, and I will give you one example.

I will be very brief, Mr. Chairman, and that is in the conventional arms limitations discussions that are about to take place. If we can have both sides arrive at defensive postures and if we have enough flexibility so that we can trade off tactical aircraft for tanks, we will both be better off. It is not just a question of our being silly or weak or anything else but a changing necessity on both sides.

I would certainly support you in your efforts and the Secretary of Defense in his efforts to get a mutual reduction in forces in Europe.

DEBT REPAYMENT

My third point is I am very pleased at your initiative with regard to the debt of the various less developed nations. I was in the administration of President Carter in the seventies during the oil crisis and was in Congress during the latter part of the Ford administration. A great part of this debt started, Mr. Secretary, as I am sure you are aware, with the banks and the financial systems cycling oil payments into these countries, which mainly are our allies, so that they could pay for the gigantic increase in oil prices that occurred. This debt was not all built up out of inefficiencies of economies. I support your debt proposal, because we are doing this in the United States with a number of our financial institutions; we try to have debt repaid rather than interest repaid in order to lower the whole level of debt. I think many of our institutions will be fortunate to receive back their money, not just make interest on it, and that a certain amount of bad debt has to be written off because it was a world policy we all pursued.

FOREIGN POLICY APPROACH TO DRUGS AND NARCOTICS

I support you in your efforts, and I hope that we as a committee will be able to help you with it. My final comment, and this is not meant in criticism, but it is my reason for being late this morning, Mr. Chairman, is that we released this morning the report from Senator Kerry's Subcommittee on Narcotics.

I want to raise it with you here in this forum. We had the report of the Subcommittee on Narcotics, Terrorism, and International

Operations, Senator Kerry's subcommittee, the ranking member being Senator Mitch McConnell. This report documents in great detail the fact that in the Central American area, we placed drug interdiction—and I am not talking about farmers and so on like that, but the Medallin Cartel, the whole movement of drugs—on the back burner to our other foreign policy objectives there.

That was the reason the Foreign Relations Committee investigated and spent time on this. It is a lengthy report, and it is not a very pretty report about involvement of our people to aid our foreign policy objectives at the expense of dealing with very bad narcotics people; a policy of turning the other way.

This involves countries like Nicaragua, Honduras, Panama, the Bahamas, Haiti. The statements were made this morning that this is a new administration and a new day and that we will all be watching.

I am not trying to operate foreign policy, but be watching both in terms of money spent and in terms of oversight that our foreign policy objectives in Central America and in South America, particularly Colombia and Venezuela, are directed toward interdiction of drugs as a No. 1 policy rather than other policy objectives, at least until we stop this white plague.

Now, some of us are having to deal with this at the city level. We don't say that interdiction is going to solve it. Not at all. But I know you are going to hear about the report this afternoon in your briefing when you get back, and I would be happy to discuss it with you further. I know Senator Kerry would. It is meant to be supportive, not just critical, that there was a very, very bad operation going on and we, through our State Department and our other agencies, condoned it.

Secretary BAKER. Thank you, Senator Adams. I think you are talking about practices that did take place in prior administrations and going back some years. I think there is already a new emphasis in our foreign policy approach on the question of drugs and narcotics. One thing we have done is elevate that issue to the same level as other issues that we will discuss regularly, for instance, in our dialog with the Soviet Union.

It is one of the transnational issues that we think ought to be discussed. And so we will be discussing it with the Soviet Union. I am aware that the thrust of the report from that subcommittee is that, basically, we tended to look the other way a little bit and emphasize other foreign policy goals and priorities and not really concentrate on what we might have concentrated on with respect to interdicting the production and transshipment of drugs.

Senator ADAMS. Right, and the actual control of governments or the domination of governments by the Medallin Cartel and by other drug narcoterrorists.

Secretary BAKER. I understand that. And I do believe it is a new day. I just want to assure you of that, that the drug issue is very important. I can't remember attending a meeting with President Bush—and he has had a number of them now with heads of state from countries that either are producing or transshipping drugs—that this issue has not been raised and emphasized at the very top of the agenda.

So we understand how important that is, and it will be, to the extent that I can make it such, an important element of our foreign policy.

ARMS REDUCTION

One comment, if I might, about your statement that what the Soviet Union concluded wasn't so much a result of what we did, maybe, but that the Soviets finally concluded themselves that an arms race was out of the question.

Senator **Adams**. I say that was part of it.

Secretary **Baker**. Part of it, yes.

Senator **Adams**. I have found long ago that very little is accomplished between the administration and Congress where you say that we cured it by our policies and we say, "No, something else happened."

Secretary **Baker**. Yes.

Senator **Adams**. I daresay that they both were involved.

Secretary **Baker**. I wasn't going to engage in that argument with you. What I was going to say was I think the change did come from them. I agree with what Senator Gramm said earlier about how our determination to remain strong defensively, and our commitment to free market economic policies and promulgation of those around the world are very, very important. But what I think happened in the Soviet Union was not so much that they decided the arms race wasn't for them as that they came to understand and accept the total and complete failure of their economic and political system.

Senator **Adams**. I would agree with you on that.

Secretary **Baker**. They have acknowledged that. I think it is very important that we understand that. That may have been a result, in my view, was a result of the policies that we have followed—the policies of strength, determination, resolve, and will—plus the economic policies that we have pursued around the world.

Senator **Adams**. Thank you very much, Mr. Chairman.

MOSCOW EMBASSY BUILDING

Senator **Hollings**. Very good.

Mr. Secretary, right to the point without discerning my colleague from Washington's comment with respect to the devices found in the Moscow construction, we only learned very recently, of course, that the device in the Leningrad consulate was two decades old and still working. This is the sort of mindset or, I should say, security mind failing that we find in our Department of State.

They are writing books about it now, "Moscow Station" and several others, because ambassadors and all say, "Well, they know what is going on anyway. The devices are used there, and I talked to them and they all know" and everything else, and it is a total breakdown of security. We had to remind your security officer sitting there in the last administration under title 18, 793(f), whereby in a grossly negligent fashion, classified material was allowed to fall into the hands of unauthorized personnel, there is a $10,000 fine and 10 years in jail.

I wanted to indict the ambassador in Moscow and the security officer. You see, we run around indicting lieutenant colonels, but we never indict the responsible officials. I wanted to indict that ambassador. Even if I didn't get a conviction, I would get security. I am spending $4 billion over here on Inman and wrecking buildings and everything else. I can get far more security from just one trial.

So you can sell discipline with respect to security. That is No. 1.

No. 2, on reasonable minds, you are right: The point is that the reasonable minds have debated and voted for it five times, and even Secretary Shultz finally came down on the side of tearing the building down for the very simple reason that you can't remove the devices without tearing it down. It is a sort of done deal, as we say in Washington.

With respect to our Marines, the one thing the record would show that the Marines were not doing in Moscow was grunting.

Secretary BAKER. What was, sir?

Senator HOLLINGS. Was grunting, everything else but grunting. I wish they were grunting. So let's get some security there. And remember, too, Secretary Baker, that Secretary Shultz has attested that we gave the contract to the Soviets.

It is a typical construction contract. I used to represent contractors, and it says to construct without defects, and this was an affirmative action plan of implantation with defects. I am not losing money. I am not going to talk to the House side about $500 million.

I am talking about the Soviets being responsible under the contract, and that is your authority as our Secretary of State not to disregard the contract and come up here and give us a bill for $50 or $100 or $150 million more. I am looking to the Soviets to pay that bill. So I wanted to get that in the record at this particular time.

PEACEKEEPING OPERATION IN PERSIAN GULF

Now, with respect to getting on that turnip truck, let's not do that with respect to peacekeeping. We have your request for a supplemental of $10.8 million this year and $29.8 million next year to finance a force for the safety of Iraq/Iran, peacekeeping they call it. They want to finance a force for the safety of Iran while they are violating the freedom of Americans.

What are we going to do? Can't we say, "Give us back our hostages and then we might help you with peacekeeping?" You didn't come to town on a turnip truck.

Secretary BAKER. No; that is right, Senator, and with respect to that one, all I can tell you is that I will look into it. We don't, of course, construct the peacekeeping.

Senator HOLLINGS. I am talking about financially. You have asked for millions.

Secretary BAKER. That is right. If you are going to finance a peacekeeping operation, you are going to finance it in the way the United Nations constructs it. And if it is peacekeeping in the Persian Gulf, in the war between Iran and Iraq, I suppose it is not unusual that there might be some Marines as a part of the force, just as there might be some Iraqis. But I will just have to look into that, Senator.

Senator HOLLINGS. Look into that very seriously, because you have got a chairman of your party, Lee Atwater, and I can see him with a 20-second bite now that Hollings has financed the arrangement that helps those who hold our people as hostages.

Secretary BAKER. I will get you a Presidential letter, Mr. Chairman.

Senator HOLLINGS. Thank you very much.

Senator Kasten.

LETTER FROM ACTING SECRETARY OF STATE

[CLERK'S NOTE.—With reference to the above discussion, the following letter was received from the Acting Secretary of State. By direction of the chairman, the letter has been printed in the record.]

[The letter follows:]

LETTER FROM LAWRENCE S. EAGLEBURGER, ACTING SECRETARY, DEPARTMENT OF STATE

MAY 31, 1989.

DEAR SENATOR HOLLINGS: During Secretary Baker's April 13 appearance before your Appropriations Subcommittee, you asked whether U.S. troops were participating in the UN peacekeeping force in the Persian Gulf and questioned whether support for this peacekeeping operation did not imply support for the Iranian regime. I would like to take this opportunity to address your concerns.

The United Nations Iran-Iraq Military Observer Group (UNIIMOG) was established by unanimous vote of the UN Security Council in August, 1988 to monitor the cease-fire between Iran and Iraq, the withdrawal of forces to international borders, and implementation of the other provisions of UN Security Council Resolution 598 (1987), which provides the accepted framework for a just and durable settlement of the Iran-Iraq conflict. UNIIMOG, which is composed of 409 unarmed observers and technical personnel from 26 countries, has broad international support. It was agreed at the outset that the United States and other permanent members of the Security Council would not provide troops. The United States has, however, provided airlift and other logistical support to UNIIMOG, and we continue to make financial contributions through our assessments for the UN's special UNIIMOG peacekeeping account.

The Iran-Iraq conflict directly threatened the security of friendly states in the Gulf, the principal supply of oil to Western Europe and Japan, and the lives of American servicemen in the area. Achievement of the cease-fire that UNIIMOG monitors was thus a major foreign policy success for the United States. It has led to a substantial reduction in tension in the area, permitting us to draw down our naval presence in the Gulf to more traditional levels, further reducing the threat to American lives and saving U.S. taxpayers millions of dollars. We and our allies have a strong interest in supporting UNIIMOG to help ensure that hostilities do not resume, but our support for this international peacekeeping venture should in no way be construed as support for the regime in Tehran or its policies.

I hope this is helpful in addressing your concerns. We look forward to continued close cooperation with the Congress on this important issue.

LAWRENCE S. EAGLEBURGER,
Acting Secretary.

QUESTION OF PLO MEMBERSHIP IN UNITED NATIONS AND RELATED ORGANIZATIONS

Senator KASTEN. Mr. Chairman, I just want to make one very brief statement, because I made an error, and I want to say it on the record. The copy of the letter that I have that is being sent to you is dated April 6 and that is why I thought it had been sent.

In the past couple of minutes, I have gone back and tried to figure out where this is, and it turns out that a number of people wanted to sign this letter and it, therefore, has been getting additional signatures and you have not received it yet.

Secretary **Baker**. Thank you, Senator.

Senator **Kasten**. That is our mistake. I thought the April 6 letter date meant it had been sent on April 6. It doesn't change my concern about the PLO and the organizations and the overall issue, but I simply wanted on the record to state that the letter has not been sent.

Secretary **Baker**. Thank you, Senator.

STATEMENT OF HON. EDWARD I. KOCH

Senator **Hollings**. The subcommittee has received a statement from Mayor Koch of New York City with regard to the reimbursement to localities for the protection of foreign dignitaries. The statement will be printed in the record.

STATEMENT OF EDWARD I. KOCH, MAYOR, NEW YORK CITY, NY

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I WANT TO THANK YOU FOR EXTENDING THIS OPPORTUNITY TO ME TO TESTIFY ON FEDERAL REIMBURSEMENT PROVIDED TO LOCALITIES FOR THE COSTS OF PROTECTING FOREIGN DIGNITARIES -- AN ISSUE OF PARAMOUNT IMPORTANCE TO NEW YORK CITY, AND INDEED, TO OUR NATION.

TODAY I WISH TO ADDRESS NEW YORK CITY'S CONCERNS ABOUT TWO SEPARATE BUT CLOSELY ALLIED DIPLOMATIC POLICE PROTECTION REIMBURSEMENT PROGRAMS: ONE FOR UNITED NATIONS DIGNITARIES, AUTHORIZED BY P.L. 94-196, AND THE OTHER FOR CONSULAR OFFICIALS, AUTHORIZED BY P.L. 98-164, THE 1984 STATE DEPARTMENT AUTHORIZATIONS ACT.

NEW YORK HAS A SUBSTANTIAL STAKE IN BOTH OF THESE PROGRAMS, SINCE THE CITY SERVES AS HOST TO THE LARGEST DIPLOMATIC COMMUNITY IN THE WORLD -- ONE CONSISTING OF OVER 32,000 FOREIGN OFFICIALS AND THEIR FAMILIES ASSOCIATED WITH 159 UNITED NATIONS MISSIONS AND 88 FOREIGN COUNTRIES.

ROUTINE POLICE SERVICES WHICH ARE PROVIDED TO ALL OUR CITIZENS, SUCH AS CRIME PREVENTION, SAFETY PATROLS, EMERGENCY AID AND THE INVESTIGATION OF CRIMINAL ACTIVITY, ARE NOT PART OF MY TESTIMONY TODAY. NEW YORK CITY AND OTHER CITIES ACROSS THE COUNTRY HAVE GLADLY ABSORBED THE COST OF PROVIDING THESE SERVICES TO THEIR DIPLOMATIC COMMUNITIES, EVEN THOUGH THE DIPLOMATIC COMMUNITY CONTRIBUTES VIRTUALLY NOTHING TOWARD THE COST OF PROVIDING THESE SERVICES. THIS IS DUE TO THE COMMUNITY'S EXEMPTION FROM INCOME, PROPERTY, AND SALES TAXES - - NOT TO MENTION PARKING FINES AND OTHER LEGAL JUDGMENTS.

THE TYPE OF PROTECTION WE ARE DISCUSSING TODAY IS "EXTRAORDINARY PROTECTION" PROVIDED BY LOCAL POLICE IN RESPONSE TO THREATS MADE AGAINST SPECIFIC DIPLOMATS AND FOREIGN PROPERTIES. SUCH PROTECTION ALLOWS DIGNITARIES TO CONDUCT THEIR BUSINESS IN AN UNHAMPERED AND SAFE MANNER.

AS YOU CAN IMAGINE, EXTRAORDINARY PROTECTION FAR EXCEEDS THE SCOPE AND RESPONSIBILITY ~~OF NORMAL~~ LOCAL POLICE ACTIVITY AND IN ACTUALITY, FULFILLS A FEDERAL RESPONSIBILITY ASSUMED THROUGH RECIPROCAL INTERNATIONAL AGREEMENTS. IT IS FOR THIS REASON, COUPLED WITH THE FACT THAT THE THREAT OF INTERNATIONAL TERRORISM HAS BECOME A REGULAR AND UNFORTUNATE PART OF OUR LIVES OVER THE LAST FEW YEARS, THAT THE FEDERAL GOVERNMENT HAS ACKNOWLEDGED ITS RESPONSIBILITY FOR THE COST OF THIS TYPE OF PROTECTION.

THE FIRST STEP IN RECOGNIZING THIS RESPONSIBILITY CAME IN DECEMBER 1975, WHEN PRESIDENT FORD SIGNED PUBLIC LAW 94-196. THIS STATUTE AUTHORIZED REIMBURSEMENT OF UP TO \$3.5 MILLION ANNUALLY FOR PROTECTION OF FOREIGN DIGNITARIES VISITING THE UNITED NATIONS. ATTESTING TO THE FACT THAT THE PROTECTION OF FOREIGN DIGNITARIES WAS A FEDERAL RESPONSIBILITY, WAS LANGUAGE IN THE SENATE REPORT ON P.L. 94-196, WHICH STATED: "LOCAL COMMUNITIES SHOULD NO LONGER BE FORCED TO BEAR THE FULL COST OF WHAT IS ESSENTIALLY A NATIONAL OBLIGATION".

AS A RESULT OF SUBSEQUENT CONGRESSIONAL ACTION, THE AMOUNT AVAILABLE FOR U.N. POLICE PROTECTION WAS INCREASED FROM THE ORIGINAL \$3.5 MILLION LEVEL TO THE CURRENT LEVEL OF \$7.0 MILLION TO MORE ACCURATELY REFLECT THE AVERAGE ANNUAL COST OF EXTRAORDINARY U.N. POLICE PROTECTION. HOWEVER, SINCE 1982, NO FURTHER ADJUSTMENTS HAVE BEEN MADE TO KEEP PACE WITH INCREASED PERSONNEL AND EQUIPMENT COSTS AND THE INFLATION RATE.

THE SECOND OF THE TWO PROGRAMS WE ARE DISCUSSING TODAY WAS AUTHORIZED FOR THE FIRST TIME IN FEDERAL FISCAL YEAR 1984 AND PROVIDES REIMBURSEMENT FOR THE PROTECTION OF FOREIGN CONSULATE OFFICIALS. ALTHOUGH $6 MILLION WAS AUTHORIZED, IN 1986 AND IN SUBSEQUENT YEARS, ONLY $2.1 MILLION WAS APPROPRIATED FOR THIS PURPOSE. THIS PROGRAM ALLOWS REIMBURSEMENT FOR THE EXTRAORDINARY PROTECTION OF CONSULAR OFFICIALS WHO, AS HIGHLY VISIBLE REPRESENTATIVES OF THEIR COUNTRIES, ARE FREQUENTLY IN AS MUCH NEED OF SUCH PROTECTION AS ARE UNITED NATIONS DIGNITARIES. NEW YORK CITY HAS FOR MANY YEARS MAINTAINED THAT LOCAL GOVERNMENTS SHOULD BE REIMBURSED FOR THE EXTRAORDINARY PROTECTION THEY PROVIDE CONSULAR OFFICIALS IN THE SAME MANNER IN WHICH THEY ARE REIMBURSED FOR UNITED NATIONS DIGNITARY PROTECTION.

BEFORE THE CREATION OF THE CONSULAR PROTECTION REIMBURSEMENT PROGRAM, THE CITY ABSORBED UP TO $800,000 PER YEAR FOR CONSULAR PROTECTION. RELIEF FROM THIS BURDEN WAS WELCOMED. HOWEVER, BECAUSE NO STATE CAN RECEIVE MORE THAN 20 PERCENT OF THE TOTAL APPROPRIATION, THE REIMBURSEMENT THIS PROGRAM PROVIDES DOES NOT COVER THE ENTIRE COST INCURRED BY THE CITY EACH YEAR. LOCALITIES CANNOT AND SIMPLY SHOULD NOT, BE EXPECTED TO ABSORB THE COSTS FOR THESE PROTECTIVE SERVICES PROVIDED AT THE BEHEST OF FEDERAL OFFICIALS.

BECAUSE OF RESOURCES PROVIDED THROUGH THESE PROGRAMS, WE HAVE BEEN ABLE TO WARD OFF SERIOUS TERRORIST ACTIONS

AGAINST THE DIPLOMATIC COMMUNITY IN NEW YORK. WITH THE EXCEPTION OF ONE INCIDENT IN 1980, THE RECORD THAT THE CITY HAS ESTABLISHED IN ENSURING THE SAFETY OF DIPLOMATS AND THEIR FAMILIES HAS BEEN EXCEPTIONAL. HEADS OF STATE, MEMBERS OF ROYALTY, AND POPES HAVE MOVED FREELY AND SAFELY THROUGHOUT THE CITY.

TO DATE, THE COMBINED APPROPRIATION OF $9.1 MILLION FOR THE UNITED NATIONS AND CONSULAR PROTECTION PROGRAMS HAS PROVED REASONABLY SUFFICIENT. HOWEVER, THE RATES AT WHICH THE CITY HAS BILLED THE FEDERAL GOVERNMENT HAVE NOT BEEN RAISED SINCE JULY OF 1986. THIS, HOWEVER, WILL CHANGE WITH THE SUBMISSION OF OUR NEXT REIMBURSEMENT CLAIM.

INCREASED PERSONNEL AND EQUIPMENT COSTS INCURRED OVER THE LAST THREE YEARS, WILL FORCE A REIMBURSEMENT RATE ADJUSTMENT IN EXCESS OF 17%. SINCE THE CITY IS ALREADY EXHAUSTING EACH YEAR'S AVAILABLE FUNDS AT THE LOWER RATE, IT BECOMES READILY APPARENT THAT THE $7.0 MILLION FOR U.N. PROTECTION AND THE $2.1 MILLION FOR CONSULAR PROTECTION WILL BE INSUFFICIENT TO SATISFY FUTURE CLAIMS.

IN ADDITION, UNANTICIPATED VISITS SUCH AS THIS PAST DECEMBER'S BY SOVIET PRESIDENT MIKHAIL GORBACHEV, WILL DRIVE UP THE CITY'S FISCAL YEAR 1990 CLAIMS BY OVER $2.5 MILLION.

IN PROVIDING DIPLOMATIC PROTECTION, THE NEW YORK CITY POLICE DEPARTMENT IS SERVING ALL AMERICANS, AND IS DOING SO AT CONSIDERABLY LESS THAN IT WOULD COST THE FEDERAL GOVERNMENT ITSELF TO DO SO. THE TREASURY DEPARTMENT TESTIFIED BEFORE CONGRESS NEARLY SEVEN YEARS AGO THAT IF THE FEDERAL GOVERNMENT WERE TO PHYSICALLY PROVIDE THIS

PROTECTION, AS IT DOES IN WASHINGTON, IT WOULD COST $20.1 MILLION TO DO SO IN THE FIRST YEAR ALONE, WITH AN ANNUAL COST THEREAFTER OF $14.5 MILLION. SURELY IN THIS LIGHT, THE $7.0 MILLION ANNUALLY WHICH HAS BEEN AUTHORIZED FOR THIS PURPOSE SINCE FISCAL YEAR 1983 HAS PROVED TO BE AN EXTREMELY COST EFFECTIVE ALTERNATIVE FOR THE COUNTRY. THIS WOULD HOLD TRUE EVEN WITH AN ADDITIONAL 17% INCREASE IN THE PROGRAM.

AS YOU CAN SEE, THE PROVISION OF POLICE SECURITY FOR THE DIPLOMATIC COMMUNITY IN NEW YORK CITY IS COSTLY, BUT MUCH LESS COSTLY THAN THE IMPLICATIONS FOR OUR COUNTRY OF INADEQUATE PROTECTION. RECOGNIZING THIS, AS WELL AS THE EVER-PRESENT SPECTER OF INTERNATIONAL TERRORISM, THE CITY OF NEW YORK SUPPORTS AN INCREASE IN FUNDING FOR THE U.N. AND FOR THE CONSULAR PROTECTION PROGRAMS. MERELY TO KEEP PACE WITH THE 1986 LEVEL, A 17% INCREASE WOULD BE NECESSARY FOR FEDERAL FISCAL YEAR 1990.

I URGE YOU TO ENACT ANY NECESSARY INCREASED FUNDING LEVELS FOR THESE WORTHY PROGRAMS AND I WANT YOU TO KNOW THAT THE CITY OF NEW YORK IS VERY APPRECIATIVE OF THE SUPPORT GIVEN THESE PROGRAMS BY YOUR COMMITTEE IN THE PAST.

I THANK YOU.

FOREIGN AFFAIRS ADMINISTRATIVE SUPPORT

[CLERK'S NOTE.—Subsequent to the hearing the committee received the following letter from Acting Secretary Lawrence S. Eagleburger with regard to the foreign affairs administrative support cost-allocation system. By direction of the chairman, the letter has been printed in the record.]

[The letter follows:]

LETTER FROM LAWRENCE S. EAGLEBURGER, ACTING SECRETARY, DEPARTMENT OF STATE

JUNE 2, 1989.

DEAR MR. CHAIRMAN: As you and the Committee deliberate 1990 Appropriation levels, I want to solicit your consideration of and support for a very important element of the President's Budget affecting the overseas administrative operations of the Department and other Federal agencies.

The President's 1990 Budget reflected a decision that agencies should pay more of their own overseas operating costs. This represents a change from current practices under which the Department of State pays a disproportionate share of such costs. This decision was consistent with expressions of intent of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies.

As a result, the President's fiscal year 1990 Budget includes a reduction of the Department of State request by $77.5 million. This is the estimated cost to the Department of providing certain services virtually free of charge to other agencies. The fiscal year 1990 Budget requests of the affected agencies include their shares of this amount, so that they may begin to reimburse the Department as required. The Department of State, having reduced its request, will have no choice but to charge these agencies for amounts expended on their behalf in fiscal year 1990. Should the funding required to offset these new charges not be appropriated to one or more agencies, some of them may have to divert substantial resources from their programs in order to pay their administrative bills.

Beyond this, if a legislative provision precludes one or more agencies from reimbursing the Department for services provided, we would have no choice but to stop providing services and to reduce administrative employment levels dramatically in keeping with reduced workload. In so doing, we would incur unplanned and unnecessary additional costs for items such as severance pay. These unplanned costs in turn would also have to be shared among all agencies. We would also be forced to charge the remaining agencies for increased shares of residual costs. Because of certain technical aspects of our Foreign Affairs Administrative Support (FAAS) cost-allocation system, such unplanned reallocations would cause severe disruption.

Mr. Chairman, potential reprogrammings or service reductions along the lines suggested above have disastrous implications not only for the Department's programs but also for the programs of other agencies, including those with direct national security missions. I know that you share our desire to avoid massive disruptions to overseas programs vital to U.S. interests. Secretary Baker and I will do all we can to work with you and the Committee toward that end. If there is any further information we can provide to assist the Committee, please let us know. We shall be happy to provide it.

Sincerely yours,

LAWRENCE S. EAGLEBURGER,
Acting Secretary.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Thank you very, very much, Secretary Baker. We appreciate it. I have some additional questions and we will keep the record open for some questions by our colleagues. Thank you very much.

Secretary BAKER. Thank you. That will be fine.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

SECURITY AT FOREIGN AIRPORTS

SENATOR HOLLINGS: As Secretary of State, what must be done to enhance airport and airline security at foreign airports? How are you and Transportation Secretary Skinner working together to ensure action on needed security improvements at foreign airports?

SECRETARY BAKER: The State Department has a number of programs underway which help to ensure both airport as well as aviation security. These programs are fully coordinated with the Department of Transportation. Among are initiatives are the following:

Working with the other members of the International Civil Aviation Organization to develop strengthened international civil aviation standards to help prevent a repetition of Pan Am 103.

Reviewing with other nations the feasibility of an international protocol which would require the introduction to "taggants" -- that is easily detectable substances -- into plastic explosives so that they can be detected by existing technology.

Undertaking research and development which is applicable to improving aviation security. Work is underway through both the national, counterterrorism research and development program as well as through the Bureau of Diplomatic Security which is applicable to this effort.

Offering aviation security training and airport police management assistance, as well as the provision of related equipment, to other nations, through the Anti-terrorism Assistance program.

Undertaking diplomatic initiatives with other governments to ensure the introduction of enhanced security measures at foreign airports which serve U.S. carriers.

Let me assure you that all of our work on aviation security is closely coordinated with the Department of Transportation and the Federal Aviation Administration.

DISTRIBUTION OF FAA SECURITY BULLETINS

SENATOR HOLLINGS: Should U.S. embassies in any given country receive FAA security bulletins affecting other nations? What is the procedure for making diplomatic personnel aware of the threat described in these security bulletins?

SECRETARY BAKER: FAA security bulletins are intended to help ensure the security of the traveling public by advising U.S. carriers of threats so that they can implement appropriate countermeasures. The Department of State and its Embassies are an important link in this process since the assistance of foreign governments is often required to introduce new security procedures. This is why security and civil aviation officers at selected Embassies are notified of such bulletins. In the wake of Pan Am 103, we have restated these procedures to our embassies and consulates in the clearest possible language to ensure that all of them understand the purpose and limited dissemination of FAA Aviation Security Bulletins.

Aviation security threats are rarely specific to any one nation. Even when they are, if security measures in one country are heightened, terrorists may shift the operation to a nearby nation where security is less stringent. Terrorists may change the target of their aircraft from one carrier to another for the same reason. Furthermore, in the case of a possible hijacking the number of nations affected by that risk includes everyone within flying distance of the area in which the plane is hijacked. For all of these reasons, aviation security bulletins are disseminated to embassies in nearby nations, as opposed to only the target country.

As State Department officials have said previously, it was not the intent of the FAA or the Department of State that the FAA bulletin concerning the "Helsinki threat" be made public or otherwise used to forewarn selectively U.S. Government officials of a threat to civil aviation. What Moscow Embassy did in posting this notice was not in accord with U.S. Government policy, and we have taken steps to guard against this ever happening again.

FAA aviation security bulletins are not "threat advisories." They are sent to Embassies so that appropriate officers -- particularly civil aviation and security personnel -- can work with the airline and the host government to introduce any needed countermeasures. The general embassy community is not advised of information contained in FAA aviation security bulletins.

To ensure that there are no misimpressions, let me state for the record U.S. Government policy concerning the dissemination of aviation security information:

- If we have a specific and credible threat to civil aviation security which cannot be countered, we will strongly recommend to the air carrier that it cancel the threatened flight. If it is a U.S. carrier, the FAA will cancel the flight if the airline will not.

- If necessary, the Department of State will issue a public travel advisory to alert the American traveling public to this threat. This notice will be widely disseminated in cooperation with U.S. and foreign media, our Embassies abroad and the travel industry itself.

There is not and cannot be a double standard between aviation security information available to the official U.S. community abroad and to Americans traveling abroad.

TAGGING PLASTIC EXPLOSIVES

SENATOR HOLLINGS: I understand that the State Department is involved in the process of mandating "tagging" of plastic explosives. How will this enhance aviation security? How can the U.S. ensure foreign compliance with this tagging requirement?

SECRETARY BAKER: We are actively exploring with other nations the feasibility of introducing a chemical marking agent or taggant into plastic explosives for purposes of enhancing the detectability of this class of explosives. If it is feasible, this could help detect the presence of explosives which might otherwise be impossible to find even by X-raying or hand searching luggage and its contents.

This issue was reviewed at a special meeting of the Summit 7 experts group in Paris on January 19 and 20 which was called to discuss Pan Am 103. The Experts agreed that discussions should begin on the possibility of an international convention that would call for "tagging" plastic explosives during their manufacturing process by those nations that produce such explosives. To begin the process of answering the technical feasibility of this recommendation, the Department of State hosted in Washington on March 2 and 3 a meeting of explosives experts from a number of allied states. At the meeting a work plan was established for further research into the basic issues involved in marking or tagging explosives. The U.S also participated in similar meetings held in early March under ICAO auspices in Montreal.

Whether it will be possible to mark or tag plastic explosives or to negotiate an international agreement regarding taggants remains to be seen. It would be difficult for the U.S. to enforce absolute compliance, even if an agreement could be adopted. As we have seen, in other situations, there are governments which are willing to directly, or indirectly assist, terrorists or to violate other anti-terrorism agreements. In this situation, the task may be somewhat easier by the common recognition of many governments that more needs to be done to detect plastic explosives.

COUNTERTERRORISM RESEARCH AND DEVELOPMENT

SENATOR HOLLINGS: What experience does State have in overseeing counterterrorist projects? Why should State be given $6 million to provide seed money for projects that would ultimately have to be funded, in large measure, through other agencies?

SECRETARY BAKER: The Department, in its NSC mandated role as the lead agency within the US Government for international for counterterrorism matters, investigated and concluded several years ago that a national coordinated effort designed to focus research and development funds and activities on counterterrorism matters did not exist. Furthermore, the Department recognized that a national, coordinated effort would never exist unless a focal point agency was selected and took on the task of devising such a program. For its part, the

Congress agreed with both the findings and recommendations in this area by approving funding to initiate the program in the FY 86 Supplemental budget with the full knowledge of the role being played by the Department.

Although the Department does not conduct the research itself, the Department has successfully demonstrated experience in managing and coordinating interagency efforts toward the achievement of national priorities and goals. An effective counterterrorism research and development effort is such a national priority and goal. To assist in overseeing the projects, the Department has enlisted the active support of many USG agencies and professionals. Individuals from 25 USG agencies are involved in nominating, prioritizing, selecting, and validating the projects involved. USG agencies, laboratories, private companies, and universities are involved in carrying out the work involved in the projects. To insure that the maximum amount possible is spent on project work and not on administrative overhead costs, the Departments of Defense and Energy volunteered to utilize their existing contracting and administrative mechanisms to handle the necessary paperwork. This has permitted the Department to maximize the amount of money spent on actual R&D work and not on overhead costs. In our view, the Department's stewardship of the national counterterrorism R&D program is on a sound basis.

The utilization of much of the funds as seed money to bring projects to the prototype stage in a short period of time is a key feature in the effort. Many of the projects selected are not and would not be initially funded on an individual agency basis owing to their technical difficulty or to higher funding priorities within the agencies. Then too, some agencies do not fully appreciate the utility of a project proposal in the conceptual stage, especially if the project initially appears to be of primary interest or concern to another agency. However, the provision of seed money which in a short time can demonstrate the ultimate utility or viability of a project, has had the desired effect of persuading agencies to take over development (including funding) of the longer term projects in order to bring them to full fruition. This method has proven its utility to the benefit of the national counterterrorism research and development effort.

HIGH LEVEL STATE DEPARTMENT POSITIONS

SENATOR HOLLINGS: Mr. Secretary, two years ago when the State Department was in a budget squeeze there was discussion of reducing the number of Assistant Secretaries and Deputy Assistant Secretaries of State.

Please provide a listing of the Assistant Secretaries and Deputy Assistant Secretaries of State on January 20, 1980 and January 20, 1989. For any positions added since January 20, 1980, please indicate the basis for each additional position.

SECRETARY BAKER: Lists of Assistant Secretaries as of January 20, 1980 and January 20, 1989 are attached. Please note that the 1980 list comes to 14 Assistant Secretaries. During the period since then the Directors of two bureaus -- Intelligence and Research and Politico-Military Affairs -- were raised to Assistant Secretary level, for a total of 16. The naming of Assistant Secretaries to those two bureaus reflected the greater importance both had achieved within the Department's structure.

With the increasing threat of international terrorism, a Coordinator of the Office of Security was named in July 1985, then named Director of the Bureau of Diplomatic Security in November 1985, and commissioned Assistant Secretary for Diplomatic Security in March 1987. No Assistant Secretary positions have been eliminated since January 20, 1980.

We do not have as good figures on Deputy Assistant Secretary positions in the earlier period. Our list that comes closest to January 20, 1980, dates from December 2, 1982, when 64 positions were filled. The closest reckoning to January 20, 1989, is a December 31, 1988, list, which records 68 DAS positions filled. These two lists do not match perfectly, since Deputy Assistant Secretary positions are established and abolished more frequently than Assistant Secretaries. As you see, the number of DAS positions increased by four during those eight years. The two lists are attached.

NOTIFICATION OF NEXT OF KIN IN DISASTERS

SENATOR HOLLINGS: Mr. Secretary, the Pan Am 103 incident has raised a number of questions about the manner in which families of the victims should have been handled. One proposal being considered calls for the State Department to notify the next of kin through the most expeditious means available. What is your position on such a proposal?

SECRETARY BAKER: I wholeheartedly support the idea that we should expeditiously notify next of kin. Indeed, our established procedures for disasters feature this as a primary responsibility.

Following the destruction of Pan Am 103, however, the airline insisted that it would assume the responsibility of notifying the next of kin. Consular personnel on our task force were most uncomfortable with this arrangement. They made repeated requests to Pam Am for their passenger manifest and family contact list.

Knowing that the Pan Am 103 next of kin would have preferred receiving notification through the State Department, we have recently opened discussions with Pan Am about standardizing our notification procedures. With other air carriers as well, we will seek to obtain agreement that they will provide us passenger manifests and next of kin contact information in a timely manner.

OFFICE OF MUNITIONS CONTROL

SENATOR HOLLINGS: The House Foreign Affairs Committee has drafted a State Department Authorization Bill that earmarks 53 full-time equivalent positions for the Office of Munitions Control for fiscal years 1990 and 1991. How many full-time equivalents for this office are budgeted in State's 1990 request?

SECRETARY BAKER: State has budgeted 39 full-time equivalents for for the Office of Munitions Control (OMC) in FY 1990 and, in addition, will fund two contract positions and one FTE in the Office of the Legal Adviser, dedicated to working on OMC matters. We have increased FTE for OMC by 25 per cent since FY-88. While current trends and legislatively mandated increases in workload strongly suggest that we will need additional staff in the future, more than 50 per cent of OMC's employees are new to their jobs and there is a limit on the number of people we can absorb and train in the short run. We are at the point now where we are reconsidering our needs to determine how many additional employees are needed, where they should be employed and how they can best be phased into the organization. Accordingly, it would not be appropriate to earmark 53 FTE in FY 1990 for this function at this time.

SENATOR HOLLINGS: In a later section the House bill authorizes the crediting of $500,000 of the registration fees collected by the Office of Munitions Control to the Department of State account. Will that $500,000 be sufficient to cover any increase required to maintain the 53 FTE?

SECRETARY BAKER: Current law authorizes the Department of State to use $250,000 of registration fees in FY 1989 for contract personnel, reduction in processing time for license applications, improved monitoring of compliance with terms of the licenses, and the automation of munitions control functions which we will expend on such items this fiscal year. An increase in this amount might cover some expenses now taken for those purposes from the salaries and expense account; it could not, however, be used to offset directly the cost of 14 FTE above our budgeted amount. Nor would $500,000 be enough to cover the additional FTE and the expenses being presently funded by this method.

PEACEKEEPING

SENATOR HOLLINGS: President Reagan transmitted a 1989 supplemental budget request for $125,000,000 for additional contributions to UN peacekeeping forces in Angola and Namibia, Iran-Iraq, and for mine clearing in Afghanistan. Our problem is that we have exceeded the deficit allowed for 1989 and any additional appropriation must be offset by reductions in outlays already authorized. The Congressional Budget Office advises that the Administration's proposal to transfer $120,000,000 from pre-1989 Defense Accounts, and $5,000,000 from Foreign Assistance Accounts, fails to be outlay neutral by $107,000,000.

The Bush Administration included the $125,000,000 as part of the supplemental appropriations requests transmitted on March 24, 1989. The Administration would offset the supplementals by reducing or cancelling budget authority of domestic discretionary accounts by 1.099 percent. Last week the Securities and Exchange Commission indicated that a 1.099 percent reduction would cause them to furlough their entire staff for 5 days.

Mr. Secretary, I note that the Internal Revenue Service would have to take a $21,463,000 reduction and the Customs Service a cut of $8,248,000 to help fund peacekeeping. If you were still Secretary of the Treasury would you think peacekeeping was so important that we had to cut back our revenue raising agencies?

SECRETARY BAKER: Senator Hollings, since I am no longer Secretary of the Treasury, I believe it would be inappropriate for me to comment from that perspective. I consider the new peacekeeping and peacemaking efforts undertaken by the United Nations to be extremely important to our foreign policy interests. We were instrumental in establishing each and every one of these operations. Our diplomatic achievements must be backed by our financial support. Without it, our ability to influence the shape and direction of these operations as well as ongoing negotiations relating to other troubled areas will be severely damaged.

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

SENATOR HOLLINGS: One of the largest increases in the 1990 budget is the additional $228,987,000 for Contributions to International Organizations. That is a 47 percent increase over the $485,940,000 now available. This increase is due to the Administration's decision to fully fund the assessments from the international organizations for the first time since 1986, and to begin repayment of our arrearages over a 6 year period. The $714,927,000 requested for 1990 consists of $669,011,000 for the full funding of the assessments and $45,916,000 for 10 percent down payment on the arrearages.

Mr. Secretary, does the return to full funding signify that the United States has achieved the reforms we sought in the international organizations?

SECRETARY BAKER: Our request for full funding and partial arrearage payments takes into account the substantial progress in implementing reforms by both the United Nations and those specialized agencies affected by the Kassebaum/Solomon Amendment. We are committed to meeting our legal obligations of membership. Failing to pay our obligations now would undermine continued implementation of reforms and belie the credibility of two presidents who have affirmed support for the UN and restoration of U.S. payments.

SENATOR HOLLINGS: Isn't the paying of the arrearages just gravy to the international organizations? For example, if I fell short last year and had to forego something like a new car, I certainly am not going to go out and buy 2 cars this year. Does our pouring an additional $45,000,000 into the international organizations for 1990 allow them to raise their spending levels and raise our assessments for 1991?

SECRETARY BAKER: Arrearage payments will not result in a windfall to the organizations, nor will these payments allow international organizations to raise their spending levels with an increase in member states assessments. Given the budget procedures of the UN organizations, they cannot spend above the approved budget level. For most of the UN organizations, for the first several years, arrearage payments would be used to rebuild working capital funds. This is a proper use of arrearage payments in accordance with the financial rules and regulations of the organizations. Pursuant to Administration policy and draft proposals in authorizing legislation, we will be exploring with the Secretariat and other member states activities for the use of our monies consistent with the Charters. These arrearage payments would be directed toward special activities that are mutually agreed upon by the United States and the respective international organizations, and their payment would be conditional upon such agreements.

UNIFIL

SENATOR HOLLINGS: With regard to UNIFIL, I note that the Department is requesting only $30,000,000 of our $46,000,000 1990 assessment, and no funds for our UNIFIL arrearages. This is the signal departure from the stance taken elsewhere with regard to full funding of our 1990 assessments and arrearages to international organizations.

In December 1985, Yitzhak Rabin as Israel's Defense Minister said that UNIFIL was not something that Israel needs. Does the departure from our overall policy on assessments and arrearages indicate that the United States is pulling back from its support of UNIFIL?

SECRETARY BAKER: Our request is based on what we believe is a realistic calculation of funding prosects given previous Congressional opposition to full funding for UNIFIL and funding constraints facing the Federal Government as a whole. The shortfall should not be viewed as a diminution of United States support for UNIFIL since we believe that UNIFIL continues to carry out essential peacekeeping functions in an extremely difficult security environment. Its presence in southern Lebanon is a decidedly positive factor in controlling the level of violence in the area. Without UNIFIL, the volatile situation in southern Lebanon could degenerate quickly, with dangerous consequences for the entire region.

It should be noted that the FY 1990 request ($30.1 million) would provide over two-thirds of estimated requirements. The request compares favorably with FYs 1989 and 1988, when appropriations for UNIFIL of approximately $18 million met less than half of our UN assessments.

Israeli attitudes toward UNIFIL have evolved since Mr. Rabin's 1985 statement. In 1987, then Foreign Minister Peres said, "In the chaotic situation which exists today in Lebanon, I do believe that for the time being, there is no replacement for the UNIFIL forces inside Lebanon." GOI officials have recently reaffirmed that, in their view, UNIFIL is playing a helpful role in southern Lebanon.

ARREARAGE PAYMENTS

SENATOR HOLLINGS: When the staff visited the UN last month they were told the arrearages would be applied to the earliest years we fell short on our payment. Since the books were closed, our payments would largely be used to make refunds to the contributing nations. Please explain how that works as it seems that instead of the $45,915,000 going to better health at WHO, or nutrition at FAO, it will actually end up in the treasuries of all the nations of the UN.

If that is so, why don't we just call it additional foreign aid and send them a check directly from our treasury with Secretary Brady's name on it instead of one from the UN signed by the Secretary-General?

SECRETARY BAKER: The common accounting practice in international organizations is to credit any payments received from member states to the earliest period for which assessments may still be outstanding. Accordingly, any U.S. arrearage payments made would be recorded chronologically dating from the earliest period for which assessments are still outstanding even though the funds were requested and appropriated to cover obligations for a specific purpose (most likely the current period assessment). However, the accounting practice thus described should not be confused with the conditions we intend to impose concerning the expenditure of additional funds that may be made available for the specific purpose of reducing our arrearages.

With regard to the organizations' actual use of the arrearage funds, we intend to hold the organizations fully accountable on how the funds will be spent. We will seek assurances, consistant with their Charters, that the arrearage payments are directed toward special activities mutually agreed upon by the United States and the respective organizations. Thus, they will not just be refunded to other donor countries. In most UN organizations the initial arrearage payments would be used to rebuild the Working Capital Funds. Once this was achieved, we would explore with the Secretariats and other member states activities for the further use of our arrearage funds in a manner that is consistent with the organization Charters and the interests of the United States.

GREAT LAKES FISHERY COMMISSION

SENATOR HOLLINGS: Although the Great Lakes Fishery Commission's sea lamprey control program has been budgeted to increase from $6,057,700 in FY 1989 to $6,965,100 in FY 1990, the Commission is actually facing a shortfall of $2.8 million from what is needed to maintain the program's current level. Because of this the Commission has decided to eliminate all sea lamprey control efforts on Lake Erie, reduce efforts by 40% on Lakes Michigan, Huron, and Ontario, but maintain efforts on Lake Superior at the current level. In light of these reductions what will be the immediate and long-term effects on the commercial and sport fishing industries in each of the Great Lakes?

SECRETARY BAKER: A biological model developed for the Lake Ontario fishery has shown that a 40% reduction in lamprey control would allow the lamprey population to increase. Sea lamprey populations would double, according to the model. The model predicts that within 10 years, the total abundance of trout and salmon in the lake would decrease 50% from present levels. A 1987 study by the Great Lakes Fishery Commission can be used to show that the impact of a 50% reduction in the commercial catch from all the lakes would result in a loss of annual economic activity of $135 million and a loss of 4,500 worker years of employment. The same model predicts that sport fishing expenditures throughout the lakes could drop by $552 million by the year 2000, under the 40% reduction of treatment scenario.

Extrapolation of the model to Lakes Huron and Michigan shows similar biological impacts. Other changes in fish populations which the model predicts are an increase in alewife populations in the three lakes. Alewife overabundance can be expected to exert competitive pressures on desirable Great Lakes species, such as yellow perch, cisco, and whitefish. The model predicts that, after 10 years of reduced lamprey control, an additional 10 to 20 years of effective treatment would be required to allow stocks of desirable fish to recover to their 1988 levels of abundance.

Maintenance of the current level of control in Lake Superior will protect the gains in restoration of native fish communities. By eliminating the treatment program in Lake Erie, the restoration of the lake trout fishery, and the development of a salmonid sport fishery will be delayed. In addition, lamprey could become predators on the Lake Erie walleye population.

SENATOR HOLLINGS: Have any of the Great Lakes states been asked to supplement the program with state funds?

SECRETARY BAKER: The Department of State has not formally requested that the states supplement the appropriated funds. States have maintained that differences in their agency enabling legislation make coordination of state funding complex. The states point out that the Federal government has a treaty responsibility, derived from the Great Lakes Fishery Convention, to control lamprey populations. In our review of the funding problems associated with the Commission, we will address this option for supplemental funding by the states.

SENATOR HOLLINGS: If so, should the program be turned over to the states?

SECRETARY BAKER: The Federal government does have a treaty responsibility for lamprey control. Perhaps a means can be found to increase the support provided by the states, but Federal responsibility for the program should continue.

SENATOR HOLLINGS: What has been the Canadian government's reaction to the decrease?

SECRETARY BAKER: The Canadian government contribution to the Commission's budget is directly related to the U.S. government contribution. Under terms of the Convention, the United States contributes 69% and the Canadian government contributes 31% toward the costs of the sea lamprey control program. Contributions toward other costs, for administration and general research, are divided equally between the two governments. The Commission had developed a reserve fund over several years, principally from interest earned in interest bearing accounts, and used this fund to supplement the contributions from the two governments. The Commission became accustomed to working with an operating budget which was greater than the sum of the annual contributions from the two governments. However, in FY 1989 this fund will be depleted. Although the requested United States contribution to the Commission budget will increase, not decrease, in FY 1990 over the appropriated amount in FY 1989, informal communications with Canada indicate that Canadian funding for the Commission can be expected to continue at current levels. The prospect for increased contributions from Canada remains slim. The Department of State will obtain a formal reaction from the Canadian government during our review of the Commission's FY 1991 budget request.

SENATOR HOLLINGS: A major cause of the budget shortfall is the dramatic increase in the price of the chemical, TFM, used to kill the lampreys. The price of TFM has risen 73% since 1986 and is only available from one West German firm. Why is this chemical so expensive and why is it only available from this one source?

SECRETARY BAKER: The West German chemical firm is currently the world's only supplier of TFM, and the Great Lakes Fishery Commission is the world's only user. Although the Commission continues to pursue efforts to develop one or more domestic suppliers of TFM, they currently are still dependent on the West German firm, with whom they have enjoyed very good relations over the years. Costs of TFM are going up for several reasons, principally the reduced buying power of the U.S. dollar versus the West German mark. The West German chemical firm has informed the Commission that they will either have to increase the price or stop production because they are not making a profit on the product at the current price. Additionally, the Commission has changed the formulation of TFM to meet possible environmental challenges to an inert ingredient in the present formulation. The chemical firm has been most helpful in agreeing to this change. Finally, annual orders will have to be increased. The orders have been less than actual use for a number of years to reduce the inventory. Now the inventory is at its minimum level. The addition of treatments for Lake Erie, which had not previously been under the regular lampricide treatment schedule, will increase the annual use of TFM. In the long run, some alternative to chemical control of lampreys should be found. The Commission research budget is used to explore such alternatives.

POSTS OVERSEAS

SENATOR HOLLINGS: I notice that the House Authorization Bill includes a provision requiring 365 day notice before the Department closes or downgrades diplomatic or consular posts abroad. In the plant closing law last year we required only a 60 day notice.

Does the Department have the capability to forecast the closing or downgrading of posts a year in advance?

SECRETARY BAKER: The Department does have this capability, but our main difficulty with the provision is that the time requirement is too long. When we have selected posts to be closed in the past it has been the result of a long and careful process which attempts to balance U.S. foreign policy interests with available resources. Once decisions focussed on budgetary savings and good management have been made they should be implemented as soon as possible. The Department's inability to close a number of posts throughout 1987 was due to the prohibitions on post closings contained in our FY 1988/89 Authorization Act. Absent those prohibitions, which were ultimately waived for a two-year period in the FY 1988 Continuing Resolution, the Department could have closed the posts in question much earlier and achieved the savings sought. We believe a 60 or 90 day notification requirement is more reasonable than the current one.

SENATOR HOLLINGS: We have had several post closing proposals that were never fully implemented. One that I never seen proposed is the Vatican. On Tuesday the USIA indicated that they were closing their post at the Vatican. What thought have you given to eliminating that non-essential Embassy?

SECRETARY BAKER: I would not describe our mission to the Vatican as non-essential. The Vatican has a unique and universal perspective on world affairs which is and should be of interest to the United States. The Holy See has diplomatic relations with 118 nations, including the United States, and we have developed a fruitful dialogue on key regional issues. The Holy See, for example, is deeply involved in human rights issues in the USSR and Eastern Europe, and has been active in efforts to find peaceful solutions in Lebanon and Southern Africa.

Our Embassy to the Holy See is a small one, and I believe it is appropriately staffed to carry out its functions. We have sought to make its operations as cost-effective as possible, and have for example implemented an important recommendation made by the Office of the Inspector General in this regard. The Department has no plans to close this Embassy.

SENATOR HOLLINGS: Where do we stand on reopening Kiev? Is that finally underway after so many starts and stops?

SECRETARY BAKER: We are still discussing the reciprocal consulate openings in Kiev and New York with the Soviets. The Department believes it is important to open a consulate in Kiev in order to have a window on this important non-Russian part of the Soviet Union and to provide services to American visitors there. But we also believe that in the short term our interests would be best served by having a relatively small staff in Kiev which would not require classified operations. To facilitate that opening, the Department has proposed for incorporation in its FY 1990/91 Authorization Bill a provision to revise the "secure permanent facilities" requirement for Kiev contained in Section 153 of our FY 1988/89 Authorization Act.

HIGH LEVEL STATE DEPARTMENT POSITIONS

SENATOR HOLLINGS: Does the Department support the establishment of an Assistant Secretary for South Asian Affairs? What would be the additional cost of such a position?

SECRETARY BAKER: The Department opposes the creation of a separate Assistant Secretary and Bureau for South Asian Affairs because we believe that South Asia already receives appropriate attention within the current structure. A Deputy Assistant Secretary in the Bureau of Near East and South Asian Affairs (NEA) is devoted to following South Asian Affairs. This matches the coverage given to all of Eastern Europe and to Canada within the Bureau of European Affairs. Within the NEA Bureau, South Asia is covered by two "country directorate" offices, and the staffing levels of these offices compares favorably with those elsewhere in NEA and the rest of the Department.

The creation of a new "mini-bureau" with only two country directorates could weaken rather than strengthen the senior-level attention devoted to this important region. South Asia policy and its implementation have received careful, high-level attention under the present structure. Our policies in the area have been remarkably effective in achieving major U.S. objectives, e.g., the withdrawal of Soviet troops from Afghanistan, and stronger relations with both India and Pakistan.

The reorganiztion required to create a new bureau of this type would also be costly. We estimate that between $1.7 and $2 million would be required to do so. Given the Department's increasingly difficult budget situation, I believe that our scarce resources should be reserved for genuinely necessary initiatives.

WORLD'S FAIR AT SEVILLE

SENATOR HOLLINGS: Mr. Secretary, the Department's 1990 budget included a $5,000,000 contribution to the World's Fair at Seville, Spain in 1992. Spain is forcing us out of the Torrejon Air Force Base and we will leave behind billions of dollars in facilities for the use of Spain. Isn't that a sufficient U.S. contribution to Spain?

SECRETARY BAKER: President Reagan's decision to commit the US to participate in Expo '92 was made on its own merits. The US presence at the Fair provides a unique opportunity to promote trade and tourism to the US. It is an ideal situation to show off the best of the United States to upwards of 50 million anticipated visitors to Spain in 1992--just as the European Single Market is scheduled to take effect. The Seville World's Fair will be the first Universal World's Fair since Osaka Expo '70 and therefore will attract considerable international attention. It also commemorates the 500th anniversary of Columbus' discovery of America. The quincentenary theme provides a back drop for showcasing US contributions to politics, science, entrepreneurship and the arts. Over 90 countries and international organizations will participate, including all of our major industrial partners, most of the Western Hemisphere democracies and a large part of the developing world, as well as the Soviet Union and its allies, such as Cuba.

Funding for the fair will stem from a unique partnership with the private sector. The cost of participation is estimated at $30 million divided equally between USG money and matching contributions from the private sector and state governments. Already, major corporations and several state governments have indicated interest in taking part. Given the trade and tourism opportunities for the US of Seville Expo '92, the taxpayer dollars spent in support of US participation are a valuable investment for the future.

Senator Hollings: The plans for the fair provide for State to ante up $350,000 in 1989 to the effort to raise $15,000,000 from the private sector for the U.S. pavilion at the Fair. Have those funds been transferred to USIA?

Secretary Baker: The Department is currently preparing a reprogramming notification as the first step towards transfering $350,000 to USIA for the U.S. Pavilion at the Seville World's Fair.

Senator Hollings: Previous practice has been for all the costs of a world fair overseas to be budgeted by USIA. Did the Department oppose distributing it among three agencies?

Secretary Baker: When President Reagan accepted King Juan Carlos' invitation to attend Expo '92, he said our participation would involve a unique partnership between the public and private sectors. To that end, USIA is actively engaged in seeking support from the private sector and state governments. The federal government will match private funding up to $15 million to cover the projected costs of U.S. participation in the World's Fair and related satellite exhibitions, thereby covering the total estimated expense of $30 million.

Concurrent with his acceptance of the King's invitation, President Reagan instructed State, USIA, and Commerce "to ensure that an adequate and equitable level of resources is reserved in each of the budgets of USIA, State, and Commerce for FY 1990," to distribute the fair costs equally among the three agencies. The

State budget request for FY 1990 includes $5 million for U.S. participation in the Seville World's Fair.

1990 ECONOMIC SUMMIT

SENATOR HOLLINGS: The Department is requesting $5,213,000 to host the summit of industrialized nations conference in May 1990. Is it necessary to have such a conference every year?

SECRETARY BAKER: The United States hosts the Economic Summit only once every seven years. The Summit is the only opportunity for the leaders of the West's largest economies to spend an extended period of time together discussing world economic problems. Over the years the Summits have accomplished much in bringing the industrial democracies together to meet common challenges: launching the current round of trade negotiations (Bonn 1985, Tokyo, 1986), arranging for special treatment for debt of the poorest African nations (Toronto, 1988), fashioning a common approach to East-West economic relations (williamsburg, 1983). Each year the agenda of the Economic Summit is full, although the specifics change with developments in the global economy.

The Summit also serves an important political purpose: it is a forum in which the industrial democracies can discuss pending international issues. The Summits have been occasion for the Seven to discuss and agree on common approaches to such transnational problems as international terrorism, narcotics, and AIDs. It also serves as a forum in which Japan can participate in forming a Western consensus on these and other important political issues.

SENATOR HOLLINGS: When we hosted this conference in 1983 in Williamsburg, we had to air-condition the William and Mary gym for the press headquarters. Where is it planned to hold this conference in 1990?

SECRETARY BAKER: President Bush has not yet decided where to hold a 1990 U.S. Summit.

MOSCOW

SENATOR HOLLINGS: Last October, based on a $400,000 study by the BDM Corporation and MK-Ferguson of the U.S. Embassy buildings in Moscow, the Department and President Reagan announced that the new office building would be dismantled to the ground and rebuilt. In the ensuing months we have had an almost daily increase in the costs that makes me wonder if the Department is using the Israeli inflation index as a guide. We started at $83 to $99,000,000 and now we hear figures from State of $280,000,000 to dismantle and rebuild. Chairman Smith on the House side has got it up to $500,000,000.

SECRETARY BAKER: As the Chairman knows, there is very strong objection to a new Moscow Embassy costing possibly $500 million dollars or more. It is imperative, after intensive study involving all concerned agencies, that we arrive at a consensus about our realistic requirements for secure space and the methods to maintain the security of such space over the long run. Ambassador Salgo is now reviewing these studies. The consensus of all interested parties will be the determining factor in the final decision-making process.

SENATOR HOLLINGS: The present law is that the Soviets cannot occupy their completed building on Mr. Alto until the Soviets provide prompt and full reimbursement for damages incurred as a result of the construction of the new U.S. embassy in Moscow. Do you not agree that those damages include the full cost of dismantling and rebuilding the new office building as it is unusable in its bugged condition?

SECRETARY BAKER: A sense of the Congress provision (Section 152, PL 100-204) calls for submission of a claim in the arbitration process for full reimbursement of the costs of dealing with the bugging of the new Embassy building in Moscow. The Department has made a claim for intentional defects, but it has not yet been quantified, pending a final decision on what to do with the new building. Meantime, we will maintain our policy of not allowing the Soviets to occupy their Mt. Alto chancery until we occupy new facilities in Moscow.

SENATOR HOLLINGS: Why is the Department studying other options? We had the study last year that was endorsed by Secretary Shultz who had some experience in construction. Now we are back to Schlesinger and the annex in the courtyard, and retaining the new building as a bugged 8-story warehouse and accommodations for transients. Why do you reject the opinion of the experts you hired and keep on fiddling around with this?

SECRETARY BAKER: No option for dealing with the new building has yet been ruled out. This Administration decided to undertake its own examination of the options for dealing with the situation. We will not delay a decision any more than is necessary for a full and proper review of the issue. This issue is an important one both in terms of ensuring the ultimate security of our operations in Moscow and of doing so at the lowest possible cost given current budgetary constraints.

SENATOR HOLLINGS: We have also seen the reports of American businesses being interested in leasing or purchasing the bugged building. Why have I not been supplied with the responses to the specific questions I sent to the Department on February 9, 1989 about this proposal?

Why won't the Department unequivocally say that it is not interested in making the site (available) to the business people? Do you really think that the businesses will fully reimburse you for the cost of moving the entire complex to another site, that is if you can get one from the Soviets?

SECRETARY BAKER: In my recent response to the Chairman's letters of February 9 and March 7 on the subject, I noted that we have not pursued details of the businessmen's proposal pending a more encouraging reply from the Soviets on the provision of an alternative site, without which the idea is not viable.

EMPLOYEE ASSOCIATIONS

SENATOR HOLLINGS: In 1986, GAO found that embassy employee associations had charged the State Department for unauthorized management profits on contracts between the embassies and the employee associations. In response to that GAO report, State officials indicated that action would be taken to recover such overpayments. How much money has been recouped to date and what was done with the recovered funds?

SECRETARY BAKER: As of March 1989, the Department has collected $343,000 in profits earned in prior years by Recreation Associations on contracts with the Embassies. These funds have been deposited into a special holding account, in accordance with procedures developed jointly with the General Accounting Office, for eventual deposit into the U.S. Treasury Miscellaneous Receipts Account.

FOREIGN NATIONALS

SENATOR HOLLINGS: Why hasn't State set up the proper reserve accounts to pay foreign national employees their severance/retirement benefits? If all foreign nationals eligible to retire and receive severance/retirement benefits in Fiscal Year 1990 were to do so, approximately how much of State's budget request would have to be used to pay off this legitimate debt? How does State plan to handle the liability for foreign national severance/retirement benefits in the future?

SECRETARY BAKER: During 1988, the Department conducted a worldwide survey to determine the total accrued severance/retirement benefits for the Foreign National work force as of March 1988. This survey indicated that the total accrued entitlement at the then current exchange rates was approximately $68 million for State and $108 million for all the Foreign Affairs agencies. It should be noted that each country's severance plan is unique and generally contains specific provisions governing the entitlements which accrue to workers under differing circumstances (i.e., voluntary vs. involuntary separation, with or without the required notice period, offsets for previous severance amounts paid, etc.) Consequently, it is extremely difficult to arrive at a single worldwide estimate of accrued severance liability which is meaningful. As such, the $68 million to $108 million estimate should be interpreted with some caution, since the actual liabilities to be paid would be influenced by many factors, some of which are outside the Department's control.

If all Foreign Nationals eligible to retire with severance/retirement benefits were to do so in 1990, we believe that the amount required to fund this would be approximately $50 million. Barring this scenario, the Department believes that future severance payments will remain in the historical $5 million range.

The Department does intend to establish a funded severance/retirement trust fund for its Foreign National work force, the logistics of which require much planning and approval of other affected agencies. The legislative language needed for the creation of such fund for the Foreign Affairs community is also being studied.

CFMS

SENATOR HOLLINGS: What are the primary reasons why State has been unable to get its long-awaited Financial Management System into an operational mode? What is State's latest estimate on when the central system will be fully operational?

SECRETARY BAKER: The Central Financial Management System (CFMS) is currently operational for all FY1989 financial transactions for four major Departmental bureaus. The transactions processed by these four bureaus utilize all of the major components of CFMS. After acquiring the Federal Financial System (FFS) software package from American Management Systems, Inc. (AMS) in July 1987, we experienced some difficulties which caused us to delay implementation in a significant number of Departmental bureaus. These difficulties were primarily in the areas of telecommunications access between bureau users and the central mainframe, unexpected complexity in the development of interface software, the magnitude of procedural issues that had to be analyzed and documented in order to fit within the framework of the off-the-shelf software package, and the inadequacy of the initial training provided by AMS. Due to a lack of standardization of computer hardware and software in the bureaus, the task of providing adequate telecommunications access to the CFMS on the central mainframe computer was more complex than anticipated. The development of complex interface software was more difficult than originally estimated. Since the Department chose to utilize off-the-shelf software, many of the current procedures had to be analyzed, modified, and documented before bureaus could become operational with CFMS. The initial user training provided by AMS concentrated primarily on how to use the CFMS from a systems perspective instead of from a functional perspective. The training involved identifying which buttons to push to enter a specific transaction not identifying which types of Departmental business activities relate to which CFMS transactions and how to match data elements from existing source documents to CFMS transactions and data elements.

During FY 1989 and FY 1990, additional bureaus will migrate from existing systems to CFMS and additional interfaces will be developed. During FY 1990 and FY 1991, all prior year fiscal data will be converted from existing systems to CFMS.

PERSONAL SERVICE CONTRACTS

SENATOR HOLLINGS: How many people does State now employ under personal service contracts? Why does State employ people under such contracts? Based on their employment under such contracts, are these people entitled to any severance/retirement benefits from the U.S. government? Has State established adequate reserves to pay any such benefits?

SECRETARY BAKER: As of December 1988, the Department estimates that approximately 11,400 individuals were employed worldwide under personal service contracts. Approximately 3,350 of the total PSC's provide security-related services to our overseas missions. An estimated 7,750 PSC's are involved in providing direct clerical, administrative and maintenance support services to our missions. The remaining 300 or so PSC's represent support specialists which are hired under contract by the Department's Functional Bureaus (i.e., A/FBO, INM, and A).

Under the terms of Personal Service Contracts, contract holders are entitled to receive many of the same benefits which are provided to Foreign National employees. This would include contributions to host country Social Security programs, and eligibility for severance benefits as mandated by host country laws.

At the present time the Department has not established reserves for funding the severance entitlements of its Foreign National work force, but is considering the establishment of such reserves in approximately 40 countries where severance liabilities accrue in a known and predictable fashion.

GAO RECOMMENDATIONS

SENATOR HOLLINGS: The head of a federal agency is required by law (31 U.S.C. 720) to submit a written statement on actions taken on GAO recommendations to the House and Senate Appropriations Committees with the agency's first request for appropriations made more than 60 days after the date of the report. Please promptly submit the required written response on all applicable GAO recommendations.

SECRETARY BAKER: The Department's responses were submitted to the Committees more than sixty days after the reports were submitted to the Department.

The only report not previously submitted is on Embassy Security - Background Investigations of Foreign Employees (NSIAD-89-76) which is being provided under separate cover.

We are also providing under separate cover updates on reports submitted prior to the beginning of the Hearings.

STATE DEPARTMENT EMPLOYEES

SENATOR HOLLINGS: Please provide the total number of State employees and their related salary costs in terms of civil servants, foreign service officers, foreign service specialists, and foreign nationals. In addition, please indicate the number of individuals employed under personal service contracts and consulting contracts and their related costs.

SECRETARY BAKER: The Department of State has 5,728 civil service employees; this figure includes career, part-time, and non-career personnel. We have 4,009 foreign service officers, and 4,619 foreign service specialists. The Department employs 11,595 foreign nationals. An additional 10,489 persons, chiefly foreign nationals have personal service contracts with the Department. We have 218 persons employed in a consulting or expert relationship.

In all, the Department employs 14,563 Americans. Together with direct hire foreign nationals, our total employment is 26,152

SENATOR HOLLINGS: How many people does State now employ under personal service contracts? Why does State employ people under such contracts? Based on their employment under such contracts, are these people entitled to any severance/ retirement benefits from the U.S. government? Has State established adequate reserves to pay any such benefits?

SECRETARY BAKER: The Department purchases the services of 10,489 persons under personal service contracts. These contractors are chiefly foreign nationals who provide commercial services necessary to our embassies and missions. They represent our attempt to achieve in an overseas setting the economies of contracting out, as required by the Office of Management and Budget's Circular A-76. Ideally we would obtain such services through non-personal services contracts, but in many countries such contractors are unavailable, or of unacceptable quality, or non-competitive in cost terms. In such countries, we rely on personal service contractors.

Prevailing local compensation practice is our guide for determining whether of not to offer personal service contractors severance pay or retirement benefits. To the extent that such benefits are part of the contract, they are paid for on a current year basis: there are no prospective unfunded liabilities for retirement benefits for such contractors.

FINANCIAL MANAGEMENT VACANCIES

SENATOR HOLLINGS: In 1988, State reported a 30 percent vacancy rate in financial management positions but indicated that efforts were underway to resolve the problem. What is the current vacancy rate? Are further efforts still underway?

SECRETARY BAKER: The current vacancy rate in financial management positions is 21 percent, and the Department is continuing its efforts to reduce that rate. A Department-wide Career Fair, held in the fall of 1988, generated hundreds of applicants for financial/clerical support positions. As a result, the Office of the Comptroller (M/COMP) was able to fill its Pre-assignment Center (30 positions) and is establishing a pipeline of potential candidates.

The Department has also developed a Financial Management Career Program using Schedule B appointing authority. It is anticipated that 20 candidates for Financial Management Specialist positions, GS-5/7, will be identified for the first program, scheduled to begin in the fall of 1989. The Office of Personnel Management (OPM) also has given the Department

Schedule B authority to hire Budget Analysts, GS-5/7, and applicants are currently being interviewed.

The combination of having a full M/COMP Pre-assignment Center and a mechanism for hiring entry-level Budget Analysts and Financial Management Specialists should result in an increased hiring level and a decreased vacancy rate.

SAVINGS IN SECURITY AND CONSTRUCTION PROGRAMS

SENATOR HOLLINGS: If State intends to merge the overseas construction activities of FBO with the physical security upgrade efforts being done under the Diplomatic Security Bureau's auspices, how would the organizational framework change? How many duplicative positions might be eliminated? Are any cost savings foreseen?

SECRETARY BAKER: The Department's organization, including that for overseas buildings and security programs, is currently under review. The effort is aimed at improving the efficiency of the Department. Any determination of cost or position savings must await the results of our review.

PEACEKEEPING FOR IRAN

SENATOR HOLLINGS: A UN-secured ceasefire is certainly in the best interests of Iran. The wife of Col. William L. Higgins, an American on assignment to UNIFIL and now held hostage in Lebanon, wrote me last year that the release of the hostages should precede our funding of the peacekeeping. Shouldn't our support of peacekeeping between Iraq and Iran be conditioned on Iran gaining the release of our hostages?

SECRETARY BAKER: Our support for the United Nations Iran-Iraq Military Observer Group (UNIIMOG) serves an important US interest: maintaining the fragile Iran-Iraq ceasefire while negotiations move toward establishment of a lasting peace.

The eight years of the Iran-Iraq war levied a disastrous human and and economic toll on the people of the Persian Gulf. Iran and Iraq together sustained over $350 billion in physical damage and economic losses, as well as over one million killed and wounded. Roughly 100,000 still languish in prisoner of war camps. Naval attacks in the Gulf on neutral and belligerent shipping alike-- including US-flagged vessels and those of our friends and allies in the Gulf-- sunk or badly damaged dozens of ships, killing 500 seamen of many nationalities. Some of our friends in the Gulf suffered missile and terrorist attacks as a direct result of the war.

The United States played an important role in the adoption of United Nations Security Council Resolution 598, which provides the framework for a comprehensive, negotiated end to the war. We did so not only because of our strong humanitarian interest in seeking an end to this tragic and vastly destructive conflict, but also because this war directly threatened our friends in the Gulf as well as vital interests of the United States, such as keeping the waters of the Persian Gulf open to international shipping and the free flow of oil.

Strong US support of UNIIMOG will help cement the ceasefire and safeguard these interests. In addition, solidifying the ceasefire will permit the US to continue its gradual drawdown of naval forces in the area to more traditional levels.

The United States, meanwhile, continues to pursue the release of all US hostages in Lebanon. We have condemned Iranian support for international terrorism, including hostage taking. We have made it clear that any improvement in US-Iranian relations cannot take place unless Iran, which retains substantial influence over the kidnappers, takes action to secure the release of the hostages. We have imposed a variety of economic restrictions on doing business with Iran that are directly linked to Iranian support for terrorism, including tight controls on exports and a near-total ban on Iranian-origin imports. We continue to urge all responsible nations not to sell arms and munitions to Iran. We have maintained a dialogue with the UN Secretary General on the importance of early hostage release.

We believe that our national interests are best served by actively pursuing both goals: the release of hostages in Lebanon and a comprehensive solution of the Iran-Iraq conflict, which we can assist through continued strong support for UNIIMOG's vital mission and the efforts of the Secretary General to bring about a lasting settlement.

NAMIBIA/ANGOLA

SENATOR HOLLINGS: From all that I can see, the agreement on Namibia did not comtemplate SWAPO Forces being in Namibia. The UN troops were to be on the borders to prevent infiltration and to confine the South African military to bases and verify their withdrawal from Namibia. Wasn't that clear to SWAPO, or why did we have the recent disastrous SWAPO incursions into Namibia?

SECRETARY BAKER: You are correct, Senator. As the UN and most of the southern African Front-Line States have acknowledged, the agreement did not contemplate armed SWAPO forces' being in Namibia. We do not know whether SWAPO misunderstood this or exactly what its motivation was in trying to infiltrate its forces into Namibia as the transition process was beginning, although it seems probable that they were trying to establish an armed presence inside Namibia which they believed would put them on an equal footing with South Africa and gain them prestige during the election campaign.

SENATOR HOLLINGS: Are we to believe that the MPLA and Cuban forces in Angola didn't know that 1,200 SWAPO Guerrillas were going to cross over into Namibia? What does that say about Angolan and Cuban support of the Agreements?

SECRETARY BAKER: As improbable as it seems, all indications we have picked up are that SWAPO's actions were so unexpected and so illogical that none of the other parties concerned -- the Angolans, the Cubans, not to mention the South Africans themselves -- anticipated them or were aware that they were about to happen. As to Angolan and Cuban support for the agreements, their behavior since April 1, including their sharp criticism of SWAPO and their cooperation in reining SWAPO in, bespeaks their strong commitment to the implementation of the agreements.

SENATOR HOLLINGS: Do you agree with the criticism that the UN troops were spending their time in Windhoek and were being deployed too slowly to the borders?

SECRETARY BAKER: The delay in deploying UN troops was a consequence of the lengthy effort by the non-aligned states at the United Nations in New York to prevent and then to reverse a decision by the Security Council to deploy a smaller number of UN troops than envisaged in the original plan for the UN Transition Assistance Group (UNTAG). This exercise consumed several weeks, during which the UN should have been mobilizing troops and equipment for deployment in Namibia. As a result only a small percentage of UNTAG's total complement, and almost none of the infantry soldiers whose job was to monitor the border, had arrived in the country by April 1. Those who were in Windhoek were from support and logistics units and were not intended for duty on the border, although some were in fact temporarily thrown into the breach.

STAFFING AT OVERSEAS POSTS

SENATOR HOLLINGS: A recent news article indicated that our allies have substantially smaller staffs overseas than the U.S. Government. How does State determine the size and composition of the State component of the staff at overseas posts?

SECRETARY BAKER: It is not surprising that U.S. overseas posts have larger staffs than our allies do. The global responsibilities and interests of the United States in the post-World War II era have been considerably greater than those of our allies, as have the resources devoted to them. While the staffs of their overseas posts have also grown during this same period commensurate with their increased responsibilities and interests, allied countries still have smaller posts than we do. A measure of the broad nature of American interests is the fact that over 25 U.S. Government agencies with over 100 million separate activities have personnel assigned at our overseas posts. It is worth noting in this regard that the State Department accounts for a distinct minority of staffing at our overseas posts.

The responsibility for determining the appropriate size and composition of our overseas staffs belongs to the Chief of Mission, in coordination with the Secretary of State. As the President's personal representative, the Chief of Mission must decide what personnel resources are required to implement the President's foreign policy in the country in question. In some cases this will mean increasing a post's staff at any given time; at others it will mean decreasing the staff. Due to budgetary constraints and the demands of good managment and security, the Department has often been required to undertake staffing reviews targeted on reducing the overall number of personnel overseas. Our general principle in this regard has always been to make the most cost-effective use of the resources at our disposal.

STATE DEPARTMENT COST SHARING

SENATOR HOLLINGS: Page 11 of State's Budget in Brief states that the Department is studying the possibility of sharing security costs and "capital costs" for buying buildings and new communication programs. Wouldn't this result in diffused management and oversight as well as the acceptance of the lowest common denominator approach in securing funding?

SECRETARY BAKER: Any further State Department recommendations on cost sharing must safeguard against the pitfalls you point out. For both reasons of efficiency and the Government's continued realization of economies of scale benefits, cost sharing of these high cost and complex programs should feature single agency program management. In addition, the system must foster adequate, high quality and standardized levels of program services. These tenets form the basis of the cost sharing proposal currently before the Congress for the operating expenses of our building, communications and other programs. They will remain in the forefront of efforts to devise a system for sharing capital and security costs.

ASIA FOUNDATION

SENATOR HOLLINGS: Mr. Secretary, what are your thoughts on The Asia Foundation and the role it plays in Asia?

SECRETARY BAKER: I consider the Asia Foundation and the role it plays in Asia to be terribly important. It supplements the U.S. Government's efforts in many countries and in many ways which the Government could not reasonably or effectively pursue. The Department has previously stated that in its view the Asia Foundation has made important and distinctive contributions to long-term policy objectives in Asia and I wish to reaffirm this view, particularly with respect to its informal and unofficial role in encouraging the growth of democracy in Asia.

For example, The Asia Foundation's Open, Just and Democratic Societies Program is the most active and extensive private American democratic institution building effort in all of Asia. In FY 1989, the Foundation will be funding more than two hundred individual projects in twenty-two countries concerned with constitutions and the rule of law, the conduct of free and fair elections, voter registration and education. The Foundation's support for human rights programs is a long-standing one and the activities it supports extends from one end of Asia to the other. It is the principal American underwriter of a number of Asian human rights organizations both national and regional. In another area of importance the Foundation's efforts in support of the USG's goal of promoting greater Pacific Economic Cooperation, more open international trading systems, the reduction of trade barriers and the protection of intellectual property have been effective. In close consultation with the Department, the Foundation has been the major source of financial support for the U.S. National Committee for Pacific Economic Cooperation.

I know of no other American organization more suited to this task.

SENATOR HOLLINGS: How much did The Asia Foundation request of the Department and how much was recommended by the Bureau of East Asia and Pacific Affairs?

SECRETARY BAKER: The Asia Foundation stated that its funding requirements for fiscal year 1990 amounted to 20 million dollars and submitted an appropriation request for this amount. The Bureau of East Asia and Pacific Affairs supported the Foundation's request. However, the Department's in-depth review of current and projected resource needs for fiscal year 1990 necessitated a significant reduction and the elimination of some projected projects.

SECURITY STANDARDS

SENATOR HOLLINGS: The long effort to obtain a residence for our Ambassador in Cairo is a good example of the problems we have with the security standards. At one time the Ambassador had suggested using the old Chancery building as a residence. This would save us the cost of acquiring a site and retain a fine building.

This was opposed by the Diplomatic Security office because they require a 100 foot set back for residences on the compound instead of the 50 foot set back for residences elsewhere. So if the Ambassador lives on the compound he had to be 100 feet back from the curb; but if he lives down the street he can only be 50 feet back.

Mr. Secretary, does the Department really think that if the Ambassador lives on the compound the assassins will bring a cannon, whereas they'll only bring a rifle if he lives down the street?

SECRETARY BAKER: The Department's experience is that the Chancery compound is the primary target of terrorist violence. Symbolically the Chancery, not the Residence, most clearly represents American interests abroad. Further, it is at the Chancery compound where the largest number of Americans work. For these two reasons, and based on the Department's experience, the Chancery is viewed as the target most likely to be attacked by terrorists.

In order to reduce the effects of an explosion the Department's building program has incorporated two basic measures in its approach to building design. First, a setback has been mandated. This increased distance greatly reduces the effects of an explosion. Second, buildings are being designed to withstand greater degrees of pressure without collapsing.

The Department has fully reviewed the option of renovating the old Chancery as an Ambassadorial residence. Unfortunately, engineers expert in the field of blast effects have determined that the structural capabilities of the building, its age, and the setback of only 32 feet mean that a relatively small explosion (100 pound charge) would cause structural failure or collapse.

While the Department of State fully supports the effort to move the Ambassador's residence onto the Cairo compound, it is felt that this should be done with a new building which fully meets current standards for physical security.

CONSTRUCTION SECURITY

SENATOR HOLLINGS: Last year this Subcommittee provided every dollar that was requested by the Department for security. Now we are informed that there is a funding shortfall in the required protection of our overseas construction sites. We are advised that the Office of Foreign Buildings is not proceeding with 11 projects due to this shortfall and this delay will increase the costs of these projects by $722,600. What amount is needed for the construction security of these projects?

SECRETARY BAKER: A total of $7,353,649 is needed in FY 1989 for the construction security costs for Bonn, Guadalajara, Hamburg, Jerusalem, London, Lubumbashi, Luxembourg, N'Djamena and Tel Aviv. The Niamey and Nouakchott projects have been cancelled. FY 1990-91 construction security costs for completing these projects would be an additional $12,363,206.

SENATOR HOLLINGS: Does not the added construction costs mandate a higher priority for these funds in the Bureau of Diplomatic Security?

SECRETARY BAKER: Last year, the Office of Foreign Buildings (A/FBO) provided a prioritized list of FY 1989 construction projects to the Department's Priorities Policy Group (PPG), chaired by the Under Secretary for Management. During their deliberations, the PPG determined that the Department could effectively support 21 projects plus two warehouses. The PPG based its decisions on two factors: first, completion of construction projects already underway so that the buildings could be certified for occupancy from the security standpoint; and second, the relative security threat levels at those posts where projects were proposed. The nine projects listed above represent new starts at posts that are in lower threat categories than a number of the approved projects.

The Bureau of Diplomatic Security can support these nine projects this fiscal year with the infusion of $7.4 million dollars.

PERSIAN GULF

SENATOR HOLLINGS: With regard to the cease-fire between Iran and Iraq, how much has that reduced spending by the Department of Defense to escort the ships in the Persian Gulf?

SECRETARY BAKER: The Department of State is not routinely informed of Department of Defense spending in the Persian Gulf. The Department of Defense would be the most appropriate source for an accurate estimate of the reduction in spending that may have occurred as a result of the cease-fire between Iran and Iraq.

U.S. MISSION TO THE UNITED NATIONS

SENATOR HOLLINGS: Last year the housing of employees to the United Nations became a prime issue. Former Senator Chiles offered an amendment to terminate the program last October 1, 1988 that was costing us $2,000,000 a year to house 44 people. In the conference with the House, we agreed on a compromise proposed by Deputy Secretary Whitehead that restricted government provided housing to 18 Foreign Service personnel and 2 appointed by the Permanent Representative. Whitehead's plan was going to save the taxpayer's $1,300,000.

Last month Ambassador Pickering told the staff that he could not live with the new arrangement and that if he couldn't get relief, he would recommend closing the U.S. Mission to the UN. Ambassador Pickering is recommending that everyone at the U.S. Mission be treated like an FBI agent and be given a 25 percent cost of living plus a transfer allowance of $20,000 for those employees who transfer to New York for a minimum of 3 years.

Apparently this Administration has shifted from "Just say no" to "I can't say no!"

Mr. Secretary, what do you think we ought to be doing in New York?

What is the cost of Ambassador Pickering's proposal?

SECRETARY BAKER: Ambassador Pickering has requested a meeting with Senator Hollings to discuss issues associated with staffing our Mission to New York. The intent is that Ambassador Pickering's consultations with Senator Hollings and other Members of Congress would result in a proposal which could be agreed to by Congress. We will address the issue fully after consultations are completed.

PANAMA

SENATOR HOLLINGS: In view of the United States' difficulties with Panama, how has the United States, Panama and Japan joint feasibility study of alternatives to the Panama Canal Progressed?

SECRETARY BAKER: The work of the Commission for the Study of Alternatives to the Panama Canal has been affected both by the state of U.S.-Panama bilateral relations and by Panamanian intransigence and the insistence of the Panamanians on pursuing their own agenda. We believe that the Panamanians are responsible for most of the delays that have prevented study progress since 1987. Indirect pressure by the U.S. and direct pressure by the Japanese have recently helped to loosen the logjam and we now hope that work can proceed at a better pace. However, the present situation is highly uncertain and we cannot provide assurances that the study effort will be able to proceed without significant differences arising. If all goes well within the next few months, we believe that the Conmmission could sign a contract for the preparation of the primary element of the Study with the international consortium chosen by the Commission in 1988.

SENATOR HOLLINGS: When will the Study reach a conclusion?

SECRETARY BAKER: Assuming Panamanian cooperation, a non-politicized working environment in the Commission, and a joint decision to extend the original terms of the Study, the earliest that the study could be completed would be in 1992. But these assumptions are broad ones, and the present political situation is unclear, with the potential for a wide number of alternative outcomes, many of which would not favor Study progress. Separately, the U.S. delegation has commenced work with the Maritime Administration to conduct four limited, unilateral studies. These studies will serve U.S. interests independently but would also complement a completed tri-partite study.

Note: The responses to the questions on the Panama Canal Study submitted by Sentor Hollings on April 21, 1989 are accurate as of that date but do not take into accunt subsequent USG actions carried out in compliance with the President's orders regarding the official U.S. community in Panama.

SOVIET EMIGRATION

SENATOR HOLLINGS: Mr. Secretary, you note that the emigration from the Soviet Union has increased dramatically. The problem seems to be that we can not get out all the people they will allow to leave. We have complaints from both Jewish and Pentecostal groups that people can't leave because the United States does not have enough personnel in Moscow to issue visas and that there are insufficient funds for their resettlement. How current is the department with assisting all those who are not able to leave the Soviet Union?

SECRETARY BAKER: Until recently, the staffing at Embassy Moscow was sufficient to allow for the processing of refugees at rates consistent with the ceiling set in the FY 1989 consultatons. The Administration has responded to the meteoric rise in the numbers of applications with four initiatives: (1) we have initiated emergency consultations to raise the ceiling; (2) we have requested supplemental appropriations to fund an increased ceiling; (3) we are increasing the staff resources in Moscow and Rome; and (4) we have introduced legislation to provide up to 30,000 admissions per year for special interest immigrant who are not eligible for admission as refugees.

INS has recently added a second interviewing officer in Moscow and will add more officers over the course of the next several months. We are studying options to further increase the INS staff in Moscow to as many as six interviewing officers, with appropriate consular and support staff, to accelerate processing.

However, we currently operate in the Soviet Union under a Soviet Government imposed ceiling on the number of employees stationed at our Embassy. There are also logistical constraints to a significant increase in processing capability. We are working to alleviate both the personnel and the logistical constraints on our refugee operation. However, given the dramatic increase in the rate of application for refugee status and the current backlog, there will continue to be delays for most Soviet emigres, both refugees and parolees.

DIPLOMATIC SECURITY

SENATOR HOLLINGS: Why does State need to have 19 regional Diplomatic Security offices spread around the United States? Is there some mandate that State and not domestic law enforcement agencies such as the FBI handle security matters in the United States?

SECRETARY BAKER: The Bureau of Diplomatic Security (DS) maintains offices in 21 major cities throughout the United States. Nine are field offices and the remainder are resident offices staffed by one to three officers. A total of 249 professional level and 48 staff support positions are allocated to the field office operation. The field office responsibilities primarily consist of criminal investigations of fraudulent passport and visa issuance; personnel security investigations of Department of State employment applicants and incumbents; protection of visiting foreign dignitaries and the Secretary of State; and security support to the foreign diplomatic community.

The domestic offices have been established at locations that best allow the performance of the above responsibilities in a responsive, effective and cost efficient manner. Office staffing is commensurate with geographic variations in workloads. The division of domestic responsibilities between DS and other Federal law enforcement agencies is for the most part clearly delineated.

The Department of State has specific statutory authority to conduct criminal investigations of passport and visa fraud. In 1988, DS investigated and closed about 1800 criminal cases. As the Department of State is responsible for the issuance of passports and visas, it has a strong interest in the enforcement of related fraudulent activities. Prior to recent staffing increases by DS and greater emphasis to this investigative area, inadequate and insufficient attention was afforded to this program.

The Department of State performs background security investigations on incumbent employees and applicants for Department positions below the rank of Assistant Secretary. The FBI performs investigations of presidential appointments for higher ranked positions. In 1988, the Department performed over 8200 background investigations with an emphasis on quality, cost effectiveness and timeliness.

The Department of State has specific statutory authority to perform protective functions directly related to maintaining the security and safety of official representatives of a foreign government and other distinguished visitors while in the United States, and to protecting foreign missions and international organizations in the United States. In 1988, the Department of State provided dedicated protection to 143 foreign guests for which there were specific security concerns. In addition, protection is afforded to the Secretary of State, senior officials traveling overseas, and to several foreign Ambassadors to counter threats to their safety. Through its field offices, DS provides protective security support and liaison to foreign missions throughout the United States. The U.S. Secret Service affords protection to selected foreign visitors but only of the rank of head of state. The FBI has responsibility for investigations associated with threats and criminal acts directed against the foreign diplomatic community, but does not perform protective functions.

SENATOR HOLLINGS: State's budget shows $85 million is needed for local guards overseas in addition to the U.S. Marine guards. The budget presentation also shows that the U.S. plans to expend $9 million for the protection of foreign missions and officials in the United States. Why isn't there some reciprocity? If we protect foreign officials while they are in the United States, why must we pay for the protection of our officials in foreign countries? Or conversely, why not stop paying to protect their officials in this country until they adequately protect our people?

SECRETARY BAKER: Each of the programs you have mentioned has a separate function that is important to understand from a comparative standpoint. The Department's local guard program is responsible for security and access control at U.S. embassies and other official office building abroad and in certain high threat countries, residential protection. The local guard responsibility is limited to the perimeter and unclassified areas of official facilities and staff residences. The U.S. Marine guards are solely responsible for control of secure areas of the chancery and certain other sensitive official offices.

It would be inappropriate to request local governments to control the access of visitors to diplomatic installations; in as much as these are internal procedures of the embassy itself. However, under the terms of the Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes (1961) our embassies do request host government's to provide police or paramilitary protection for official facilities and the Ambassador's residence. Currently there are seventy (70) host government's that are providing this service on a full time basis. Additionally, where a significant threat is identified we have been successful in obtaining additional protection.

In terms of reciprocity for protection by host governments, we receive more than we give in most countries. As examples: Chad provides 14 individuals, Niger 14, Sudan 49, Zaire 38, Brazil 24, Guatemala 73, Bolivia 128, El Salvador 52, Dominican Republic 55, Korea 46, Turkey 27, Spain 32, Canada 36, and Pakistan 102.

In the U.S., our government has no dedicated personnel providing protection solely for these facilities. Most of the embassies mentioned are covered via U.S. Secret Service uniformed police patrols, and not by full time assigned security personnel. therefore, reciprocity will cost the U.S. Government many times more than we are spending if applied on an equal basis.

In regard to our program for protection of foreign missions and officials residing in this country, these services are provided on a limited basis for a finite period for a specific purpose. They are generally instituted in response to credible intelligence threat information, planned demonstrations, or criminal activity directed against diplomatic/consular personnel or property. The protective measures taken are generally removed when the threat ceases.

SENATOR HOLLINGS: When do you foresee budget requests for physical security projects being substantially reduced or eliminated?

SECRETARY BAKER: Although a number of physical security projects have been funded in the past several years, a backlog of important projects remains to be done. Due to the overall budget constraints and the exhaustion of special no-year funds from the FY 1986 supplemental, the physical security budget for FY 1989 and FY 1990 contains no funding for new projects. Without funding increases in future years, this backlog of projects will continue indefinitely.

AMBASSADOR'S RESIDENCE IN CAIRO

SENATOR HOLLINGS: Mr. Secretary, I was recently in Cairo and learned that we have a great opportunity to finally obtain a decent residence for our Ambassador.

As I am sure you know, we had a property in Giza that President Nixon gave to the Egyptians to make into their Presidential Residence. So we then purchased another residence in Maadi that was so far from the embassy that the Ambassador refused to live in it. Then the Egyptians gave us back the site in Giza and we built the infamous "Place on the Nile" where they didn't test the pipes before they plastered the walls, and when the water was turned on they had water running all over the place.

Luckily we found buyers for both of these white elephants but at the same time our Ambassadors have been forced to continue to live in a totally inadequate location that defies all security standards.

Lately there has been some thought of a penthouse on top of the new tower. That has been discarded as it should have been and as I understand it we now have an option to purchase a residence that was formerly occupied by the late King Idris of Libya, an opportunity that Ambassador Wisner recently located in the Dokki suburb on the Giza side of the Nile.

I am told that FBO now has an estimator and an architect in Cairo looking at the property.

Mr. Secretary, do you agree that this has been delayed too long?

Will you see to it that the subcommittee is periodically advised on the status of this project?

SECRETARY BAKER: Without question, our Ambassador's residence in Cairo does not meet security standards and a move to a more secure location is overdue. We are currently assessing two options: construction of a new residence on the chancery compound in connection with the second office tower (Cairo II), or purchase and renovation of an existing residence in Cairo/Dokki which has recently become available.0
As we move closer to a decision on this issue, we will keep the Subcommittee fully informed.

NATIONAL FOREIGN AFFAIRS TRAINING CENTER

SENATOR HOLLINGS: Last year we appropriated $30,000,000 for the National Foreign Affairs Training Center to replace the Foreign Service Institute. The center will be built at the Arlington Hall site to be vacated by the Department of Defense. The Department's request includes an additional $39,000,000.

How far along is this project?

What would be the impact of deferring the $39,000,000 to fiscal 1991?

How does the number of parking spaces planned for the Arlington Hall site compare to those the FSI has now? If there is an increase please explain.

Where do we stand on the assurances that Secretary Shultz made that parts of the facility would be available for community recreational use? Specifically, will the community be able to use the ball field that exists west of George Mason Drive?

We understand that Arlington's Master Transportation Plan includes a bicycle trail through part of the Arlington Hall property. There is concern that this will be blocked for security reasons. What is the current status of the trail?

SECRETARY BAKER: The Master Plan for the project was approved by the National Capital Planning Commission (NCPC) on March 2, 1989. The project is now in the tentative design stage. Transfer of the site to the Department of State is scheduled for October 1, 1989. The demolition contract documents are 95% complete, and demolition is scheduled to start in October 1989, shortly after the Army vacates the site and it is transferred the Department. The construction manager contract is scheduled to be awarded on or before October 1, 1989.

The current project schedule and cost estimate is based on receiving the $39 million in time to start construction in Fiscal Year 1990. If this were deferred, costs would rise sharply. We would have to reevaluate all available options to determine the most practical method for proceeding with the project.

Although the deferral of funding will delay construction at least 12 months, demolition of buildings on the site will still have to take place for safety and health reasons. Project funds will have to be used for site maintenance, security, utilities and county services. In addition, the delay in the relocation of the existing Diplomatic Security and

Foreign Service Institute operations from currently leased space would result in additional lease costs for the Department. For all these reasons, our preliminary estimate is that it will cost at least an additional $12 million if funding is deferred to Fiscal Year 1991.

Parking is not presently provided by the Department of State at the currently leased Foreign Service Institute facilities in Rosslyn, Virginia. Instead, street parking and commercial parking lots are used by many of the staff, students and visitors. Public transportation in the area is convenient, with a Metrorail station a short walk from FSI and satisfactory bus service that serves most parts of the metropolitan area.

At Arlington Hall there are few alternatives available other than to provide adequate parking on the site. The area is not near a Metrorail station; one infrequent bus line passes by the site; and there are no commercial parking lots in the vicinity. Arlington County and the neighboring communities have restricted parking on the streets to residents and guests only. They do not want our employees to park their cars on the neighborhood streets. Therefore, the proposed number of on-site parking spaces was deemed necessary by our project architects and traffic consultant and was approved by the National Capital Planning Commission. The number assumes improvements in bus service and an active carpooling program.

The approved Master Plan provides for joint recreational use of the entire western portion of the site and some of the southern portion of the main tract, until such time the Department of State has a need for future expansion. It also includes a bicycle and jogging trail through part of the site. A Memorandum of Understanding will set forth provisions between the Department of State and Arlington County regarding this joint use. At this time the existing ball field on the west side of George Mason Drive is planned to remain and be used jointly by the community and Department of State.

The National Capital Planning Commission's approved Master Plan for this project currently includes a new east-west bicycle/pedestrian trail. The trail will extend from First Road South on the west side of George Mason Drive to South Quincy Street, where it will connect to the existing Seventh Street trail. In response to Arlington County's concerns, we are now considering alternatives for an extension of the trail to Second Street South. We are working with Arlington County officials to provide the route in a manner that will not adversely affect the program and concerns of the Department of State and will be acceptable to our future neighbors in the adjacent Alcova Heights community. The trail has always been planned to be open to public access and will not be blocked by our proposed design.

INTERNATIONAL CULTURAL AND TRADE CENTER COMMISSION

SENATOR HOLLINGS: During our hearing with the United States Information Agency we found as a member of the International Cultural and Trade Center Commission they were making payments to the Commission to design an International

Cultural and Trade Center. The Department of State is also a member of this commission.

Is the Department making payments to the Commission? If so, how much has been paid and from what appropriation? When were these funds budgeted or reprogrammed for this purpose?

How much is budgeted for payment to the commission in 1990 and where in the budget?

USIA testified that they had an interest in moving into this building. What is the Department's interest in this building?

SECRETARY BAKER: Yes, the Department made payments to the commission in the amount of $150,000 in Fiscal Year 1988 and $20,000 in Fiscal Year 1989 in accordance with Public Law 100-113 which authorized the Department and other ex officio agencies to pay the costs of the commission. Both payments were transferred from the International Center Act to allow use of the Development_Trust funds to examine proposed areas for international development. One of the main intents of this legislation was to provide limited funding for initial studies, international development and related activities for international development such as the ICTC.

No funds are budgeted for the commission in Fiscal Year 1990.

The Department of State strongly supports USIA's move to the ICTC. The USIA's foreign affairs-related functions will provide a highly visible and beneficial service to the Department . The Department also plans to relocate its passport and visa operations to the ICTC since these functions also work directly with foreign relations and complement USIA's functions.

SALE OF PROPERTY

SENATOR HOLLINGS: The 1990 projects sale of properties amounting to $4,900,000. Does this include the Consulate at Istanbul?

SECRETARY BAKER: $4.9 million was included in the Fiscal Year 1990 estimate as a level of anticipated proceeds from rental agreements, property sales and other miscellaneous reimbursements to A/FBO programs. The Istanbul Consulate is not included in the Fiscal Year 1990 sale of property projections. This property will not be surplus until the new office building is completed, currently scheduled for 1993.

SENATOR HOLLINGS: Please explain how the proceeds of sales amounting to $1,176,000 on page FBO-31 ties to the $2,000,000 amount for 1988 on page FBO-32.

SECRETARY BAKER: Historically, budget submissions for the Foreign Buildings Operations account have detailed proceeds of sale and other proprietary receipts realized in the actual year. The Fiscal Year 1988 and 1989 budget submissions omitted these details. Therefore we included the Fiscal Year 1987 and 1988 actual data in this presentation.

Page FBO-32 displays object class requirements and the estimated proceeds of sale that were assumed in the Fiscal Year 1988 appropriations action. The Fiscal Year 1988 estimate of $2 million for sales proceeds exceeded the amount actually realized for a two-year period. This had the effect of reducing obligational authority by the amount that actual proceeds realized fell short of the estimate.

SENATOR HOLLINGS: Please list the amount of the proceeds for each State Department property sold over the last 5 years.

SECRETARY BAKER: The following property sales have occurred during the last five years:

Post	Property	Proceeds	FY Totals
FY 1985:			
Georgetown	Marine Security Guard Residence	$ 128,239	$ 128,239
FY 1986:			
London	6 Senior Off. Res.	$ 3,200,000	
Bonn	Building Site	179,856	
Canberra	Senior Off. Res.	148,567	
Melbourne	Con. Gen. Res.	640,794	
Canberra	7 Staff Res.	691,389	
Kinshasa	2 Staff Apts.	19,200	
Cairo	Ambassador's Res.	12,774,414	17,654,220
FY 1987:			
Winnipeg	Con. Gen. Res.	$ 169,487	
Rotterdam	Con. Gen. Res.	376,716	
Wellington	Warehouse	60,553	606,756
FY 1988:			
No Sales			
FY 1989:			
Singapore	4 Senior Res.	3,956,000	3,956,000

SENATOR HOLLINGS: Did State have OMB concurrence before it embarked last year on its multiyear "rationalization plan" to sell off a number of properties in Singapore and replace the existing chancery? Why isn't the $3.9 million from the sale of 4 properties in Singapore in December 1988 and the estimated $6.7 million from the soon to be completed sale of 3 other properties shown in the FBO progrm budget presentation? How many other sales or anticipated sales are not included in the budget presentation?

SECRETARY BAKER: The Department is proposing to construct a new chancery building in Singapore. The need for this project is motivated by the Government of Singapore's plans to widen the road adjacent to the current chancery building. The road widening would eliminate the existing minimal setback and would present an unacceptable security risk. The Government of Singapore has agreed to delay the road project until the U.S. Government can relocate Embassy operations. A market analysis and property appraisals indicated that it would be possible to generate sufficient funds through the sale of U.S. Government-owned land and buildings to acquire a site and construct a new chancery building. To test the validity of the property appraisal and the efficacy of a project financed with sales proceeds, the Department offered four senior officer residences for sale. In December 1988 sales agreements were negotiated, and $3,956,000 was received in proceeds, which exceeded the property appraisals. These sales demonstrated that the market was strong and that the planned program was realistic. With this assurance a notification providing details of the Singapore program was forwarded to OMB which they are currently reviewing.

Because of the difficulties in proprietary property sales, the A/FBO budget presentation historically has indicated proceeds from sales that have been realized in the prior year only.

If the Singapore program proposal is approved, the Department anticipates realizing $49.0 million in proceeds from sale. There are no other property sales currently pending.

OVERSEAS HOUSING STANDARDS

SENATOR HOLLINGS: Is it true that FBO now intends to increase the overseas housing standards after GAO found that a number of overseas posts were not adhering to the existing standards?

SECRETARY BAKER: The basic objective of the interagency housing policy is to provide overseas employees housing which is comparable to that in which they would reside in the Washington Metropolitan area and which is adequate to suit their personal and professional needs at a cost most advantageous to the US Government. The current housing policy and standards were developed in 1979 and have not been reviewed or updated in ten years. Reports by the GAO citing instances of overstandard housing, and special studies by the Office of the Inspector General and the Office of Management Programs in the Department, have highlighted several problems: insufficient compliance with existing standards, inadequate oversight capability, and inconsistent application of the policy.

Based on current statistics and documented trends in the housing industry, A/FBO has drafted a proposed new policy and standards which strengthen the comparability objective by providing housing space allocations based on rank and family size. A clearer measuring system and revised reporting requirements will ensure greater consistency between posts and improve management's ability to monitor the housing program. The proposed policy will provide increases as well as decreases in space authorizations for employees in some categories. However, the net overall increase in space is minimal, projected at two percent of our total housing space, and we anticipate no adverse budget implications. The proposed policy, which would be applied to all agencies overseas, requires interagency approval. It is scheduled for review by the Washington Interagency Housing Board this month.

USIS OFFICE BUILDING IN CALCUTTA

SENATOR HOLLINGS: For several years we have heard different reports about how the construction of the USIS building in Calcutta was progressing. What is the current status and estimated completion date? Is it true FBO has made arrangements for USIA to pay for some aspects of the projects? Is it correct that the contractor has made some financially significant claims against FBO that may further increase the total cost?

SECRETARY BAKER: This project was initiated in FY 1985 with an appropriation of excess Indian rupees (an equivalent of US $8,750,000). We subsequently received an additional US $1,430,000 ($650,000 for construction and $780,000 for project supervision). Because the project was originally funded in rupees, no U.S. firms bid on the project, and the contract was awarded to an Indian firm, Ansal Properties & Industries Ltd., in September 1985. In August 1986 the project was delayed because of excavation problems related to the diaphragm walls designed to protect adjacent properties. The engineering solution and implementation took approximately seven months. The project is currently 75% complete and is projected to be finished in December 1989.

The Department has not budgeted funds for furniture and furnishings for this building under the assumption that USIS, which is the sole occupant of the building, would provide its own furniture, including recycling existing furniture holdings.

The contractor has submitted a claim amounting to $2.13 million (in rupee equivalents). Regarding this claim, the USG position is that it owes the contractor an amount not to exceed $150,000. The A/FBO contracting officer will be issuing a final decision shortly. In addition to this claim, an additional $400,000 will be required to complete the telephone system and make purchases in the U.S. of some furnishings.

OVERSEAS FURNITURE PROCUREMENT

SENATOR HOLLINGS: Why did the Department proceed with an overseas furniture contract that was based on highly subjective selective criteria as "esthetics" rather than using cost as a primary factor in differentiating among acceptable offers? Why did State use such widely different selection criteria from what other federal agencies, such as GSA and DOD, use to meet similar needs?

SECRETARY BAKER: Cost was the single most important factor in awarding the contract in April 1988 for the Department's procurement of home furnishings and related accessories.

In developing the solicitation for the contract, the Department sought to address problems experienced with earlier contracts by placing increased emphasis on the technical criteria to be used in evaluating vendors' proposals. Cost was determined to be the single most important factor (assigned a weight of 40 percent), followed by three technical factors, each having a weight of 20 percent. The three separate factors were: (1) packaged home aesthetics, (2) furniture suitability, and (3) program administration plans. These factors were intended to ensure improvements in such areas as quality of construction, design for low maintenance, ease of reassembly, and consolidation and preparation of orders for overseas shipments.

An evaluation methodology which weights aggregated technical factors more heavily than cost is common in major procurements conducted by federal agencies. Although we cannot address the issue of what specific criteria the Department of Defense would use for such a procurement, the Department consulted extensively with the General Services Administration (GSA) in developing the solicitation. After thorough review, the GSA issued written approval of the Department of State-drafted solicitation prior to its issuance on June 2, 1987.

By way of background, since the late 1960s the Department of State has maintained a program to provide residential furniture for personnel assigned to overseas posts. Beginning in November 1983, the Department met its furniture requirements by utilizing a competitively awarded contract administered by the GSA. During the period 1983-1986, the Department experienced a number of performance problems under GSA's contract that adversely impacted upon the Department's furniture program. Extensive records detail a number of problems with the quality of furniture and service received under the prior contract. Particularly troublesome were recurrent problems with broken or missing pieces of furniture. In order to address these types of problems and to better meet its overseas furniture needs, the Department utilized the 60% technical/40% cost evaluation approach described above.

Prior to the November 1987 closing date for the submission of proposals, none of the vendors challenged the evaluation criteria used in the solicitation. Indeed, seven separate vendors submitted proposals in response to the Department's solicitation. In accordance with the stated evaluation plan, proposals were initially evaluated for their compliance with certain specified mandatory technical factors. Responsive proposals were then evaluated in accordance with the three key technical factors (packaged home aesthetics, furniture suitability, and program administration plans) and were also evaluated for cost. As the final step in the process, each proposal's price point score and technical point score were combined, with the relative standing of the vendors determined by their overall point score.

In sum, although cost was not the only factor in awarding this contract, cost was still the single most important factor. In this instance, the Department believes that vigorous competition on technical and price grounds resulted in an award which is most advantageous to the U.S. Government, price and other factors considered.

CONSULATE OFFICE BUILDING IN LAHORE

SENATOR HOLLINGS: What happened in the construction project in Lahore, Pakistan that caused FBO to terminate the contract before completion of the work? How much will this project overrun the original cost and completion date estimates?

SECRETARY BAKER: Because this project predated the Diplomatic Security Act, it was initially funded by an appropriation of excess Pakistani rupees. The contract was awarded to a joint venture between a U.S. firm and a Pakistani construction firm (Aegis-Alhuseini-ADA). Both firms realized substantial financial difficulties related to other ventures subsequent to award of the Lahore contract. As a consequence, it was our belief that the contractor was unable to complete the work on time as specified. Rather than continue with the same firm, it was determined to be in the U.S. Government's best interest to terminate the contract for convenience. A/FBO is continuing construction work and will contract for completion of the project by new subcontractors.

The Lahore consulate project was 60% complete at the time of termination. To date we have received funding for the project of $7,045,000 ($3,631,000 in rupees). This project has been affected by changing security standards and new program requirements, including the requirement for an uninterruptible power supply system. We will need additional funds to complete construction and these estimates are being developed. We anticipate a reprogramming action this fiscal year for this purpose. The completion of the project is delayed by 13 months to April 1990.

REPRESENTATIONAL HOUSING

SENATOR HOLLINGS: Why does State continue to request more money for representational purposes, when the State Inspector General and GAO keep pointing out that a large percentage of overseas staff that receive representation housing are carrying out little, if any, representational functions?

SECRETARY BAKER: The report by the State Inspector General (OIG) on the representation function concluded that the Department of State's overall funding for representational activities is inadequate. The report states that representation is a vital tool in diplomacy and needs reemphasis. Efforts to strengthen the representation program, emphasizing the importance of this function in developing professional and personal relationships with host-country nationals, are currently underway. Additional funds have been requested to augment this program. With regard to representational housing, the OIG noted that in some instances, employees assigned to representational housing held few functions in the home. As a result of the OIG findings, A/FBO has drafted a new housing policy and standards. The proposed standards eliminate representational housing as a category and establish tiered standards based on rank and family size. The proposed standards will better support the objective of the housing policy: to provide housing comparable to that which employees occupy in Washington and which is adequate to suit their personal and professional needs at a cost advantageous to the U.S. Government.

FURNITURE FOR PRINCIPAL OFFICERS

SENATOR HOLLINGS: Over the past 2 budget cycles, State has received $14 million for furniture for ambassadors, consul generals and deputy chiefs of missions. Now State wants another $4 million. How many residences is State furnishing with these funds? Does each new occupant get to choose new furniture at these residences? Don't the new ambassadors bring their own furniture? Are there established limits on how much State will spend for each residence or size of residence? What controls are in place to ensure that such government funds are expended in the best interest of the government? The State Inspector General is responsible for detecting waste and abuse, but who in State is specifically accountable for managing the buying of such furniture and controlling the related costs?

SECRETARY BAKER: $8.4 million of the amount provided in FY 1988 included initial purchases of office furniture for new Embassy facilities in Amman, Djibouti, Georgetown, Mogadishu, Muscat and Nicosia. Only $4.0 million was available for repair and replacement of furniture and furnishings in our ambassadorial, deputy chiefs of mission and consul general (when principal officer) residences in FY 1988, and work was accomplished on 47 representational residences. In FY 1989 $2.0 million was appropriated for this program, and work was accomplished on 17 representational residences. There are 34 representational residences scheduled for major interior design restoration in FY 1990 which includes commodity and shipping costs (transportation is 50-100% of acquisition costs). Official china, glassware, kitchen utensils, large kitchen equipment and art insurance for the 379 representational residences worldwide is also a major component of this activity.

Each of the 379 representational residences is furnished by the Department and furnishings are not based on the personal taste of the occupants. Each residence is placed on a seven-year review cycle focused on repairing and renewing existing furniture, not on total replacement.

New ambassadors do not bring their own furniture. Furniture and furnishings are provided by the Department for all Ambassadors' residences. Under the provisions of the Foreign Service Buildings Act of 1926 as amended, 22 U.S.C., Section 291, the Secretary of State is authorized to furnish the living quarters of all Foreign Service employees with household equipment, within the limit of any appropriation made by Congress. The occupants may have a limited personal shipment of effects for clothing, books, decorative items, etc.

The Department has not established a dollar limitation on the amount that can be spent on each residence. The funds requested in the FY 1990 budget, and previous years, are used to maintain and refurbish representational residences based on the needs of the residences scheduled for work in that particular year. The budget is submitted to the Refurbishment of Representational Residences Committee for review and approval.

The furniture and furnishings program is administered through the Bureau of Administration and Information Management's Office of Foreign Buildings Operations, Interior Design and Furnishings Division, which makes determinations on the equipment and specifications for the commodities to be purchased, and controls all resources available for this program. Procurement of such material is consistent with Federal Procurement Regulations and Practices as outlined in the Federal Acquisitions Regulations (FAR).

PHONE BILLS AT OVERSEAS POSTS

SENATOR HOLLINGS: There have been allegations that phone bills at some posts vastly exceed the amounts budgeted because calls of a private/personal nature are routinely being made. How much does State spend each year on long-distance or overseas telephone calls? How does State control or monitor calls to ensure that such calls are being made for official purposes?

SECRETARY BAKER: To ensure that telephone calls are being made for official purposes, the Department has installed at overseas posts approximately 50 Call Accounting Systems that record the time a call is placed, the extension or telephone number originating the call, the station called and the duration of the call. The complete record of the call provides the post with the information necessary to collect payment for any personal or unofficial calls. Call Accounting Systems are scheduled for installation at a number of additional posts.

Most overseas post telephone systems also have Toll Restrictors which can be programmed to limit the long distance call capability to specific telephones. This arrangement allows employees to place long distance calls through the mission switchboard operator where the call is manually recorded.

OVERSEAS BUILDINGS MAINTENANCE REQUIREMENTS

SENATOR HOLLINGS: GAO reported last year that State has a serious backlog on maintenance problems that have not been addressed. Is State's fiscal year 1990 request sufficient to meet its maintenance needs? If not, what would it take to meet the need?

SECRETARY BAKER: Our FY 1990 budget request includes $79.5 million in maintenance and building upgrade programs -- $52.9 million for maintenance of buildings, $15.4 million for Facilities Maintenance Assistance, and $12.2 million for rehabilitation of existing chanceries. This request reflects only a portion of the total long-term rehabilitation and maintenance requirement.

The requirement to maintain, rehabilitate, and replace major systems in our aging building inventory is an issue of major concern in the Department. We are presently taking concrete steps to determine the extent of the problem, to identify the resource requirements and to provide the appropriate solutions. These steps are:

- We presently are conducting condition surveys of overseas properties to determine the extent of requirements and to provide firm data for a worldwide rehabilitation and system replacement program.
- Regional maintenance centers are being established in Europe and Washington to provide inspection, training and maintenance assistance to Eastern Europe and the developing world.
- Professional Facilities Managers are being provided for each new office building.
- An evaluation of worldwide maintenance staffing requirements is underway to formulate recommendations for additional maintenance staffing as may be needed at overseas posts.

We fully expect that the results of the steps we are taking to address maintenance, rehabilitation, and system replacement issues will result in a substantial budget requirement in the out-years to fund and staff our long-term requirements.

SECURITY FUNDING

SENATOR HOLLINGS: In total how much has State actually expended on diplomatic security and FBO security-related construction each year for the past 4 years?

SECRETARY BAKER: With the inception of the "Inman" program in FY 1986, Congress and the Department officially recognized the Diplomatic Security Program. The amounts expended for each program by fiscal year are shown below:

($000's)

Program	1986	1987	1988	1989
Diplomatic Security	$434,525	$292,528	$303,000	$300,000
FBO Security-Related Construction	$409,000	$213,000	$--	$--

FINANCIAL INTEGRITY ACT REPORT

SENATOR HOLLINGS: State's December 1988 Financial Integrity Act Report says that the Department has 35,000 non-U.S. citizens on its payroll. How many work for the State Department and how many work for other agencies overseas who have a reimbursable arrangement with State? For the foreign nationals that work directly for State, please advise us where these people are located and generally what their functions are.

SECRETARY BAKER: As noted in our 1988 Federal Managers' Financial Integrity Act Report, approximately 35,000 non-U.S. citizen employees from some 30 agencies are serviced by the Department's Foreign National Payroll/Personnel System. Of this total, approximately 21,000 are State Department foreign national direct hire and contract employees. Included in the above State Department totals are approximately 2,000 employees whose salaries are reimbursed by other agencies through the Foreign Affairs Administrative System.

Foreign national direct hire employees perform a wide range of professional, clerical and administrative services at overseas posts which are "governmental" in nature.

Foreign national contract employees (i.e., personal service contract holders) perform a wide range of activities which are "commercial" in nature, including such functions as motor pool, char force, general maintenance services, and the like. A distribution of the foreign national employees work force is presented below:

STATE DEPARTMENT
FOREIGN NATIONAL EMPLOYEES

Regional Bureau	Direct Hire	Contract	Total
AF	1268	3930	5,198
ARA	1824	1507	3,331
EAP	1516	1250	2,766
EUR	3496	1480	4,976
NEA	1994	2964	4,958
TOTALS	10,098	11,131	21,229

THE ASIA FOUNDATION

SENATOR HOLLINGS: The Department is again budgeting $8,300,000. This was an arbitrary amount the Department came up with as part of the reductions necessary for an acid rain budget amendment that President Reagan wanted before a meeting with the prime minister of Canada. What substantive analysis went into developing the $8,000,000 amount?

SECRETARY BAKER: The Department fully appreciates the TAF contribution to U.S. foreign policy objectives in Asia. While we do not question the importance or benefit of TAF programs, we believe that any increases will be at the expense of other more critical activities within the State Chapter of the budget.

The Department's request for 1990 is in line with the Administration's and the Congress' efforts to reduce the federal deficit. The $8.3 million is consistent with this objective and is in line with the requests we have submitted since 1985, i.e. between $8 and $10 million.

REDUCTION IN AUTHORIZATION

SENATOR HOLLINGS: Mr. Secretary, as I understand it, the House Foreign Affairs Committtee has authorized $1,496,387,000 for the non-security part of States' Salaries and Expenses appropriation. That is a reduction of $22,128,000 from the amount the Department requested. If the reduced level holds and becomes our ceiling, how would you suggest we trim your request?

SECRETARY BAKER: The Department is examining the implications of the Budget Summit Agreement upon the 150 budget function funding, including the impact of additional Export-Import Bank funding in these amounts. In addition, we are trying to deal with the disparity between Budget Authority and Outlays in the agreement. Until this examination of budget implications is complete, we are unable to make specific recommendations or reductions.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

THE PLO, THE PFLP-GC AND PAN AM 103

SENATOR LAUTENBERG: In a letter to me from Janet Mullins, Assistant Secretary for Legislative Affairs, responding to my letter to you, Secretary Baker, you stated that the PFLP-GC is a rejectionist front element of HTE Palestinian movement. It seeks to remove Arafat as the PLO leader, has threatened his life, and opposes his dialogue policy with the United States.

Is it not true that a representative of the PFLP-GC sits on the Palestine National Council, the governing body of the PLO?

Has any attempt been made by Arafat to remove this representative form the Palestine National Council?

SECRETARY BAKER: The PFLP-GC is not currently on the Palestine National Council. Thus, it has not been necessary for Arafat to remove a PFLP-GC representative.

SENATOR LAUTENBERG: Has Arafat been asked about the involvement of the PFLP-GC in the Pan Am bombing?

SECRETARY BAKER: The PLO has been asked for any information it may have on the bombing of Pan Am flight 103.

SENATOR LAUTENBERG: What has the State Department done to raise this issue with the Syrian Government? Have we asked them to expel the PFLP-GC from its headquarters in Damascus? From its training bases in Syria?

SECRETARY BAKER: The State Department has repeatedly discussed this group's activities with high ranking Syrian officials. We have told the Syrians that Syria must bear responsibility for this or any other group's terrorist activities as long as they remain in areas under Syrian control. We reminded the Syrians of this following the October 26, 1985 arrest of several PFLP-GC elements in West Germany on weapons and explosives charges.

RESETTLEMENT OF EMIGRANTS

SENATOR LAUTENBERG: Would you support legislation to reinstate a rebuttable presumption that Soviet Jews and other persecuted Soviet religious minorities, as well as all those holding a letter of introduction in Vietnam and registered with the Vietnamese Orderly Departure Program are refugees?

SECRETARY BAKER: The Department of State shares the underlying objective of your question: that the United States continue its policy of generous resettlement of emigrants from the Soviet Union and Vietnam.

In our overall review of Soviet refugee policy, we are looking at whether such categories are necessary or warranted. We would not favor legislation that would confer automatic refugee eligibility on a particular group or groups of applicants.

The Administration's approach has three elements:

> (1) adjudicate all applicants fairly to assign them to the proper admissions channel under our laws -- immigrant visas for those who are eligible; refugee admissions for those who meet the statutory definition for refugee status; and parole for those who fit neither immigrant nor refugee criteria;
>
> (2) enact new legislation for special interest immigrants -- 30,000 per year -- to replace parole;
>
> (3) raise the FY 89 refugee admissions ceiling and obtain supplemental appropriations quickly to cover the FY 89 requirements.

As a general matter, we would not favor legislation which benefits only specific groups.

It is already possible to establish categories for persons who share common characteristics that identify them as targets of persecution in a particular country. Categories have been used in our Indochinese refugee program since 1983.

One concern we have with the approach you mentioned is the question of automaticity, the implication of a 100 percent qualification of all persons in a category. In our judgment, categories should at most confer a presumption which can be overcome if the adjudicating officer has specific evidence to show that there is no well-founded fear of persecution.

A second concern is with the establishment of a category defined as Vietnamese holders of U.S. letters of introduction. Categories should describe characteristics of the group in question that indicate they may be targets of persecution. For Vietnam, the 1983 INS guidelines established 10 separate categories, including Catholics, Buddhist monks, and ethnic Chinese. There is no reason to believe that all U.S. LOI holders are targets of persecution; many LOI's are issued for immigrant visa beneficiaries and other family reunion cases.

The Administration's proposed special interest immigrant program would allow us to continue to offer entry to Soviet Jews, evangelical Christians and others who do not have current immigration numbers or who are not found to be refugees; this would allow us to use our limited refugee numbers and funding for those who meet the refugee standard.

SENATOR LAUTENBERG: Secretary Baker, I'd like to discuss the administration proposal to admit 30,000 immigrants each year for the next 5 years if their admission is in the foreign policy interests of the United States.

What kind of message do you think it sends to the Soviet Union about how we view current conditions for Soviet Jews if we say that 30,000 Soviet Jews seeking entry into the U.S. each year face no legitimate fear of persecution in the Soviet Union?

SECRETARY BAKER: Your question refers to the legislation recently forwarded to the Congress that would establish a new category of immigrant. This legislation provides for the annual admission of persons who do not qualify for regular refugee or immigrant status but whose admission is deemed to be in the foreign policy interest of the United States. All Soviets are not being admitted as refugees because the Refugee Act of 1980 requires that to qualify as a refugee, an applicant must have been persecuted or have a well-founded fear of persecution. The Immigration and Naturalization Service has found that not all Soviet applicants to meet that standard.

We feel that our refugee policy sends to the world a message that we are a fair and compasionate country. The United States' record on resettling refugees is second to none, and this Administration intends to continue that tradition. However, neither the United States, nor indeed any country, can resettle each and every refugee, of which there are over 13 million worldwide. We do not, and cannot accept every deserving refugee from Vietnam, Eastern Europe, Africa, Cuba, or Iran, for example. Although we will accept many, we will not be able to accept unlimited number of Soviets for permanent resettlement in our country.

The Administration's special interest immigrant initiative, combined with our refugee admissions program, represents a continuation of a compassionate and generous immigration policy, and an appropriate response to the current situation. As we have mentioned earlier, we are also undertaking a policy review to examine the longer-term implications of the Soviet migration issue, including policy options to address the situation fairly and responsibly.

SENATOR LAUTENBERG: Secretary Baker, as you see from my questions, I am very concerned about the problem of Soviet Jews being denied refugee status. As you know, for many years, all Soviet Jews were accepted as refugees without question. Recently, denial rates for Soviet Jews applying for refugee status have been as high as 40%.

Given our historic insistence on letting Soviet Jews our of the Soviet Union, don't you agree it's ironic that now we are refusing to take them into this country as refugees, and do you agree with this new administration policy?

SECRETARY BAKER: The U.S. Government has and will continue to press the Soviets to allow free emigration for its citizens. Our objective is to continue our policy of generous resettlement of emigrants from the Soviet Union.

However, I should note that U.S. promotion of freedom of emigration worldwide does not imply parallel rights to immigrate to the country of one's choice, nor does it confer an automatic offer of resettlement to the U.S. Refugee status adjudications are the purview of the Immigration and Naturalization Service. In recent months the INS has found that not all potential emigrants from the Soviet Union meet the statutory definition of refugee. The Refugee Act of 1980 requires that refugee applicants from all countries establish their claim to a well-founded fear of persecution. As is the case in other parts of the world, not all Soviet applicants are able to meet that standard.

The Attorney General is exercising his parole authority for those individuals not qualifying as refugees. To qualify for parole an applicant must submit an Affidavit of Support from a friend or relative or any other concerned individual. Thus all Soviets are currently given the opportunity for admission to the U.S. including those who do not qualify for refugee status.

The Immigration and Naturalization Service is working hard to train its officers more thoroughly on the conditions which affect religious minorities in the Soviet Union. It is my understanding that, owing in part to this additional training, approval rates have increased recently.

The Administration's proposed legislation to establish a new immigration category of special interest immigrant will provide the United States with a further means to continue our ability to offer generous resettlement to Soviet applicants.

SENATOR LAUTENBERG: Secretary Baker, current State Department estimates are that 40,000 Soviet Jews will seek entrance to the U.S. as refugees in FY 1989. Private agencies estimate that 60,000 will seek entrance in FY 1990.

Based on these numbers, why is the State Department asking for less money in FY 1990 than in FY 1989 when this year's appropriation has already proven insufficient?

SECRETARY BAKER: The levels of Soviet applications in recent months are cause to question the adequacy of the FY 1990 estimates if current policies are maintained.

The Department is undertaking a comprehensive policy review of Soviet migration issues in order to address longer-term policy. This review will enable us to assess any additional needs for FY 1990 and beyond, including the large resource requirements of our present policies. We will be consulting with the Congress on the results of this review.

SENATOR LAUTENBERG: In October of 1988, the State Department changed its policy for care and maintenance. It is now reimbursing private agencies only for the first 30 days of such costs.

Given that the average stay is approaching 75 days, and the private agencies are now paying about $1 million a week, does the State Department have any plans to reevaluate its care and maintenance policy?

Does the administration have any plans to reduce the time which these people stay overseas?

SECRETARY BAKER: The thirty-day limitation placed on all Soviet applicants at the beginning of FY 1989 was based on the careful assessment that they could be processed within this time period. That assessment, made subsequent to close consultations with the voluntary agencies, was fair and reasonable given conditions at the time and expected numbers of applicants. After the decision, however, the number of persons arriving in Vienna increased dramatically which made it difficult for the agencies to meet this requirement.

While the Bureau is making a best faith effort to reimburse voluntary agencies, the costs incurred for even thirty days have exceeded the Bureau's available resources as of the first week of May. A major part of the $85 million supplemental request for admissions is, in fact, attributable to projected care and maintenances costs borne by the voluntary agencies for Soviet applicants in Western Europe, including beyond the initial thirty days. When additional funds become available, we will reimburse the voluntary agencies for the costs of processing and providing care and maintenance for the Soviet refugees within the limits of the funds available.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

PEACEKEEPING

SENATOR RUDMAN: The Administration is requesting $111 million for US contributions to United Nations peacekeeping activities in 1990, an increase of $82 million from the level provided in 1989. In addition, you are requesting the approval of supplemental language to allow for the transfer of up to $120 million from the Defense Department and $5 million from foreign aid accounts for peacekeeping activities this year. According to the Congressional Budget Office, this will generate $107 million in new outlays in 1989.

The Bush Administration is proposing to offset all its supplemental budget requests with an across-the-board reduction of 1.1 percent from domestic discretionary accounts. Defense and international programs would be exempt. Is it fair to ask the Federal Trade Commission and the Securities and Exchange Commission to furlough employees -- as they have told us they will do if the proposal is implemented -- in order to fund this supplemental request?

SECRETARY BAKER: I am informed that current Administration estimates reflect a $37.5 million outlay reduction from the Department of Defense. As you can appreciate, I am not in a position to comment on any actions that may be taken by agencies other than the Department of State.

I consider the new peacekeeping and peacemaking efforts undertaken by the United Nations to be extremely important to our foreign policy interests. We were instrumental in establishing each and every one of these operations. Our diplomatic achievements must be backed by our financial support. Without it, our ability to influence the shape and direction of these operations as well as ongoing negotiations relating to other troubled areas will be severely damaged.

NONRECURRING COSTS

SENATOR RUDMAN: The budget justification states that the Travel Document Issuance System (TDIS) will be in place by the end of FY 1989. What operational cost savings have been generated as the result of this new system and what are the nonrecurring costs associated with it?

SECRETARY BAKER: The Travel Document Issuance System was first proposed in FY 1976 as a five-year effort to introduce automation and, through that, quality control to passport manufacture. Labor-intensive manual machines called Flexowriters which had been produced in the early 1950s and whose manufacturer had ceased to build them clearly needed replacement. At that time, OMB estimated that automation would bring $31 million cost savings in 1974 dollars over ten years, assuming that there would be no growth in the number of passport applications.

However, a number of developments changed this projection radically. For one, initial TDIS appropriations were not provided until FY 1979 when funding introduced the system at the Washington passport agency. Second, installation has taken twice as long as originally forecast. This in turn was due to several factors such as funding being stretched out, changes in system design and components, changes in the passport materials themselves and contract performance problems.

Above all, the projection of cost savings was overtaken by tremendous workload expansion. There were 2.47 million passport issuances in the 1974 baseline year. The 1975 passport output bottomed out at 2.33 million units and issuances since then have never been as low. In 1977, passport workload first reached the 3 million mark. By 1983, over 4 million passports were issued and it only took two more years to reach 5 million issuances. What this means, of course, is that TDIS was not only replacing obsolete technology but was also providing additional, automated production capacity in lieu of additional, manual capacity and was therefore avoiding additional staffing costs. Expanded workload precluded cost savings but automation investment precluded higher labor costs.

Earlier, I mentioned that implementation of TDIS took twice as long as had been proposed. Dynamic advances in computer technology over the implementation decade enabled us to automate the last six agencies with a microprocessor-based TDIS-II more flexible and expandable than the original TDIS which was rigidly tied to a central processing unit. This means that the agencies automated in the early 1980s now have software which is obsolescent and equipment which is wearing out. Consequently, we cannot non-recur amounts budgeted for passport automation. Since we face by the mid-1990s further workload expansion due to wholesale expiration of passports with 10-year validity, we must modernize the original installations and increase our production capacity.

CONSULAR OPERATIONS

SENATOR RUDMAN: According to the budget justification, the Special Agricultural Workers program is ending, but "workloads are not expected to decline significantly since any decreases will be offset by additional spin-off requirements from IRCA." What does this mean?

SECRETARY BAKER: The spin-off effect of the Special Agricultural Worker program results when the new immigrants petition for family members to join them in the U.S. soon after they obtain permanent residence status. The result is a sustained immigrant visa caseload level for the Foreign Service posts where these visas must be processed.

UNITED NATIONS FUNDING

SENATOR RUDMAN: The Administration is requesting $205 million for the United Nations in 1990. This represents our full assessment to that organization and is an increase of over 40% from the 1989 level of $144 million.

The modified Kassebaum amendment, which expires this year, provides that our full assessment to the United Nations should only be available if the President certifies the United Nations is making progress in three areas --

1) the consensus-based budget reform procedures are being implemented and respected by the General Assembly;
2) the Soviet Union and Eastern Bloc countries are not being allowed to place employees in the Secretariat through back-door, short-term contracts called "secondments";
3) the UN endorsed 15 percent reduction in the staff of the Secretariat is being implemented.

Several weeks ago the staff of the subcommittee visited the United Nations and found that while progress was being made, staff reductions have not reached the 15 percent level. The Assistant Secretary General for Human Resources Management informed them that staff reductions had reached 12 percent and were not likely to go lower. Indeed, the Assistant Secretary General stated that it would probably be necessary to inform the General Assembly that a delay would be necessary in the implementation of this proposal.

Mr. Secretary, we've seen reductions-in-force and furloughs for many of the domestic agencies in the Commerce-Justice-State appropriations bill. It is going to be difficult to convince our colleagues and our constituents that the UN deserves its full assessment if it is unable to comply with one of the three conditions specified in the Kassebaum amendment. If the United Nations proposes to delay the 15 percent staff reduction, what will be the position of the United States?

SECRETARY BAKER: The General Assembly has continued to call for implementation of the 15 percent reduction while recognizing that the Secretariat is unlikely to achieve fully the goal within the three years set by the original resolution in 1986. We consider it unlikely that the Secretary General will ask to be relieved entirely of his obligation for further cuts. However, the peacekeeping operations may require a slower rate of implementation. We shall continue to pursue this issue actively and urge as early an implementation as possible. The 15 percent target is still the goal.

REPROGRAMMINGS

SENATOR RUDMAN: The Committees continue to receive reprogrammings which fail to provide necessary budget information. Please analyze the impact of the following amendment:

Sec. _______. Reprogrammings submitted by the Department of State to the Committees on Appropriations pursuant to the reprogramming provisions of this Act shall include an explanation and crosswalk providing information regarding the impact of the reprogramming on the program, project, activity, subactivity or bureau from which funds and/or positions are requested.

SECRETARY BAKER: While the Department has no objection to the import of the amendment, we are already making every effort to provide this budget information for all reprogrammings and the amendment is therefore unnecessary.

FOREIGN SERVICE INSTITUTE

SENATOR RUDMAN: Last year the Congress provided $30 million to begin construction of a new Foreign Service Institute in Arlington, Virginia. Secretary Schultz informed us that this was his top priority. This year the Department is requesting $39 million to complete the funding for the facility, for which only a small portion of the original funds have been obligated.

The Department is requesting $48.6 million in additional construction security funding in 1990. A shortage in construction security funding in 1989 led to the delay of renovation projects in Bonn, Guadalajara, Hamburg, Jerusalem, London, Luxembourg, Tel Aviv, and at several other sites.

If we must make a choice, where do your priorities lie? Do you agree with former Secretary Schultz that funding for the Foreign Service Institute is the highest priority of the Department?

SECRETARY BAKER: The majority of the funds in our FY 1990 request are contained in three high priority areas:

-- $1.88 billion for State Department operations, the bulk for salaries and expenses and diplomatic security related items. Included in this request is $39 million to complete construction of the new National Foreign Affairs Training Center; an item of great importance to me and former Secretary Shultz.

-- We are also requesting $348 million to begin construction on several important new overseas projects, such as an urgently required chancery in Bangkok ($88 million). In addition, our request includes $68 million to properly maintain our current inventory of buildings.

-- A third priority is $832 million to fully fund our assessments to the various international organizations and UN peacekeeping operations. This amount includes $46 million as the first payment in a multi-year plan to meet our arrearages to these organizations.

BUDGET JUSTIFICATION

SENATOR RUDMAN: The budget justification provides very little detail about functional and object class budgets for the programs within the Department of State. Please analyze the impact of the following amendment on the 1991 budget justification:

> Sec.______. For fiscal year 1991, the Department of State shall submit a budget justification document to the Committees on Appropriations which provides function, subfunction, and object class information for each program, project, activity, subactivity and bureau within the Department.

SECRETARY BAKER: We believe that the Department's detailed budget justification provides Congress with a wide variety of information on our various programs, functions, bureaus, appropriations as well as object class accounting data.

As we have in the past, we will continue to work with the Committee to include the type of information you find helpful when reviewing our budget request. However, the proposed appropriation language referred to in your question would require the Department to furnish information that is not currently available through our accounting and budget systems. To manually construct this data would force us to delay beyond a reasonable period the submission of our budget justification without substantial improvement to the finished product. We therefore request that this proposed amendment not be adopted by the Committee.

INFORMATION MANAGEMENT

SENATOR RUDMAN: Information management cites a so-called "current services" level of funding for 1990 of $342.9 million, an increase of 27.2 million over 1989. Please provide the details of this increase.

SECRETARY BAKER: The Department's FY 1990 Congressional Budget Submission includes a current services level of $342,914,000 for Information Management (IM), a decrease of -$10,452,000 from the 1989 estimated level. However, requested program increases of $37,615,000 make the total FY 1990 Budget request for IM $380,529,000, an increase of $27.2 million over 1989. The table and explanations below show how we arrived at this level of funding for the IM program.

	Funds ($000)
FY 1989 ESTIMATE	$353,366
Transfers from Salaries and Expenses:	
Office of Inspector General (OIG)	-51
Foreign Affairs Admin Support System (FAAS)	-18,967
Total Transfers	-19,018
Built-in Changes	
Decreases:	
Non-recurring costs for Machine Readable Visas	-5,000
Increases:	
Wage increases	4,028
Price increases	9,538
Net Total, Built-in Changes	8,566
FY 1990 CURRENT SERVICES	$342,914
Program Changes	
Beltsville Information Management Center (BIMC)	17,915
Department of State Telecommunications Network (DOSTN)	19,700
Total Program Changes	37,615
TOTAL 1990 REQUEST FOR IM	$380,529

Explanations:

Transfers:

Office of Inspector General, $51,000. Section 108 of the Inspector General Act Amendments of 1988, requires a separate appropriation account for the Department's OIG. This $51,000 transfer reflects a reduction to the base resources in the Salaries and Expenses account for this office for the Information Management program.

Foreign Affairs Administrative Support System, $1,800,000. As a result of the restructure of the FAAS system, resources currently included in the Department of State appropriation for administrative support of other foreign affairs agencies, will be transferred to those organizations in FY 1990. For Information Management this includes $16,625,000 for communications support and $2,342,000 for information systems support.

Built-In Changes:

Decreases:

Non-recurring costs for Machine Readable Visas, $5,000,000. The 1988 Anti-Drug Bill provided $5,000,000 to State for the development of a machine readable visa.

Increases:

Wage and price increases, $13,566,000. This amount will cover annualization of FY 1989 increases to cover the full year costs of wage and price increases, and the estimated increases for wage (i.e., FSN wage adjustments; increased cost to the Department for its participation in Health Benefits Program); and price increases for such things as: rents, utilities, supplies and contract services.

Program Changes:

Department of State Telecommunications Network (DOSTN), $19,700,000. This increase will fund the purchase of communications equipment and facilities; contract support; circuits; maintenance and salaries and benefits for the DOSTN program.

Beltsville Information Management Center (BIMC), $17,915,000. This funding will be used to purchase the computing equipment, software, furnishings, and supplies necessary for the IMC to become operational.

NEW BEIJING EMBASSY

SENATOR RUDMAN: In Beijing the State Department is considering a proposal to expand the Embassy compound by taking over the Bulgarian Chancery next door. I understand the Bulgarians are building a new compound which will be completed in the near future.

If this is done, does the State Department intend to deconstruct the existing chancery building on the new site or simply take over what Bulgaria leaves us? If we do the latter, how can we be sure we don't have Moscow in Beijing?

SECRETARY BAKER: The Department of State is currently conducting negotiations with the People's Republic of China on overall property issues in China. Included in these negotiations is the Bulgarian Embassy compound adjacent to our current compound and across the street from the Bruce Compound. The acquisition of the Bulgarian Chancery, along with our current holdings, would provide adequate space for all office functions in Beijing.

The Bulgarians will be moving to another site but they have yet to begin construction of their new diplomatic facilities. Therefore, even if the U.S. Government were to conclude negotiations for the property this year, we would not be able to take actual possession for several more years. This will give the Department sufficient time to explore a number of options for this property including demolition of the current building and construction of a new building or retention of the current building as an unclassified-only facility.

ISRAEL DIPLOMATIC FACILITIES

SENATOR RUDMAN: The 1989 appropriations act for the State Department includes a provision to authorize the construction of two new diplomatic facilities in Israel -- one in Jerusalem and one in Tel Aviv. It does not address the issue of the official site of our embassy in Israel.

On January 18th of this year the United States signed an agreement with Israel to acquire a new site in Jerusalem. I understand the agreement also provides that an acceptable site in Tel Aviv will be furnished within twelve months.

Are funds included in the Foreign Buildings Office to begin work on these facilities? Do you have an estimate of construction costs? How do you intend to finance the construction?

SECRETARY BAKER: The Fiscal Year 1989 Appropriations Act stipulated that the new office building projects in Tel Aviv and Jerusalem proceed simultaneously. The January 18th agreement identified a Jerusalem site. An acceptable location in Tel Aviv is still being sought; however, program planning for both projects has been completed. The early estimate for the cost of both projects, excluding any site costs, is approximately $150 million. When an acceptable site in Tel Aviv has been identified, the Office of Foreign Buildings Operations will request reprogramming for A&E (architect and engineer) funds to proceed through the design phase. Construction funding for both projects will be considered in the Fiscal Year 1991 budget.

SPECIAL ENVOY

SENATOR RUDMAN: The 1989 appropriations act for the State Department included a provision to establish the position of special envoy to the Afgan resistance. It also expressed the sense of the Congress that not later than 30 days after the date of enactment, the President should name such an envoy with the rank of Ambassador.

Do you intend to recommend that the President name such an envoy to the Afgan resistance?

SECRETARY BAKER: The President has decided to appoint a Special Envoy for Afganistan. His choice will be announced shortly by the White House. The Special Envoy -- with personal rank of Ambassador -- will be based in Washington and report to me. He will travel frequently to maintain a regular dialogue with a range of Afgan resistance leaders and others. His focus will be primarily on the resistance Interim Government, explaining our policy and exchanging views with its leaders. He will also participate in Washington considerations of all aspects of policy toward Afganistan, including humanitarian assistance.

QUESTION SUBMITTED BY SENATOR TED STEVENS

EC FUR LABELING PROPOSAL

SENATOR STEVENS: Chairman Hollings, Senator Rudman, I appreciate the opportunity to review the President's budget request for the Department of State.

I don't have any questions about the Department's budget, but I would like to make an inquiry about Secretary Baker's position on the European Community's resolution to require the placement of derogatory labels in fur garments imported from the United States.

The directive, which has not yet been adopted by the Council of Ministers, would require American manufacturers to sew labels into fur garments imported into the EC indicating that the animal species is commonly harvested in leghold traps.

The proposal would have a devastating impact on the economy of rural Alaska -- particularly Alaska's Native community -- and our nations's $200 million fur trade. I have urged Ambassador Hills to oppose the EC's action, but I'd like to know what position the State Department has taken on this important issue.

On February 27th I was advised by the United States Trade Representative that the Department of State was working on a demarche on this issue to send to the American mission in Brussels to present to European Community leaders. Has that demarche been delivered yet and what can you tell us about its contents? Please provide a copy of the demarche for the record.

SECRETARY BAKER: Our mission in Brussels discussed this issue with EC officials on March 3. They noted that the EC is our single largest market for furskins, and expressed the concern of both the Administration and Congress about the economic effects of a labelling requirement on a wide spectrum of Americans, including native communities. They also noted that alternatives to leghold traps are not without drawbacks and requested that the EC discuss the issue thoroughly with its trading partners before taking any final action.

Our mission in Brussels reports that EC Commissioner Ripa di Meana announced this week that a proposal on the general issue of leghold traps will be submitted to the European Parliament before the end of this month. The Commission proposal must be submitted to the European Parliament for comment and then to the Council of Ministers for adoption before it can be implemented. We expect to address the issue again once we know the details of the proposal, and would encourage other interested groups to comment as well.

The Canadians have suggested that one forum for arriving at a consensus on this issue may be the Group for International Humane Trapping Standards of the International Standards Organization, which can gather the necessary expertise for a thorough discussion of the merits of existing and alternative trapping methods.

CORRESPONDENCE FROM SECRETARY OF STATE TO SENATOR KASTEN

[CLERK'S NOTE.—Subsequent to the hearing Senator Kasten received a letter from the Secretary of State with regard to the discussion during the hearing of the Palestine Liberation Organization's attempts to join international organizations. By direction of the chairman the letter has been printed in the hearing record.]

[The letter follows:]

LETTER FROM JAMES A. BAKER III

MAY 26, 1989.

Hon. ROBERT W. KASTEN, JR.,
United States Senate.

DEAR BOB: Thank you for your letter of April 13, signed by 38 members of the Senate, expressing concern over attempts by the Palestine Liberation Organization (PLO) to obtain membership for the self-proclaimed "state of Palestine" in the United Nations and its affiliated specialized agencies.

I can assure you that we share that concern and that we are engaged in intensive efforts to block such attempts. We have strong objections on legal and political grounds to membership of "Palestine" in U.N. agencies. In particular, we are concerned that this will politicize the specialized agencies and complicate our efforts to advance the Middle East peace process.

We welcome the decision of the World Health Organization (WHO) to defer consideration of the PLO's application for membership. The United States worked actively to achieve this result, which we believe is in the best interests of all concerned. It reaffirms the integrity of the WHO and will permit the organization to proceed with its vital health programs.

We will continue to monitor this situation closely in the WHO and other U.N. agencies, and we will firmly and actively oppose requests for any change in the observer status of the PLO.

Sincerely yours,

JAMES A. BAKER III.

SUBCOMMITTEE RECESS

Senator HOLLINGS. That concludes the hearing today. We will be in recess until the hearing with the Secretary of Commerce next week at 10 o'clock, April 19.

[Whereupon, at 12:03 p.m., Thursday, April 13, the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, April 19.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

WEDNESDAY, APRIL 19, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Rudman, Stevens, and Kasten.

DEPARTMENT OF COMMERCE

SECRETARY OF COMMERCE

STATEMENT OF ROBERT A. MOSBACHER, SECRETARY OF COMMERCE

ACCOMPANIED BY:

- CRAIG HELSING, CHIEF OF STAFF
- THOMAS J. COLLAMORE, ASSISTANT SECRETARY FOR ADMINISTRATION-DESIGNATE
- WILLIAM D. FRITTS, JR., SPECIAL ADVISOR TO THE SECRETARY
- OTTO WOLFF, DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION
- FRANK DeGEORGE, INSPECTOR GENERAL
- PAUL FREEDENBERG, UNDER SECRETARY FOR EXPORT ADMINISTRATION
- ALLEN MOORE, UNDER SECRETARY FOR INTERNATIONAL TRADE
- WILLIAM EVANS, UNDER SECRETARY FOR OCEANS AND ATMOSPHERE
- C.L. KINCANNON, DEPUTY DIRECTOR, BUREAU OF THE CENSUS
- ERIC PETERSON, ACTING DEPUTY UNDER SECRETARY, U.S. TRAVEL AND TOURISM ADMINISTRATION
- LEE MERCER, ACTING DEPUTY UNDER SECRETARY FOR TECHNOLOGY ADMINISTRATION
- ALAN P. BALUTIS, DIRECTOR, BUDGET, PLANNING AND ORGANIZATION
- MARK E. BROWN, DIRECTOR, OFFICE OF BUDGET

BUDGET REQUEST

Senator HOLLINGS. Today, the subcommittee will review the 1990 budget of the Department of Commerce except that on tomorrow we will have a detailed review of NOAA's budget. The Department request for 1990 totals $3.1 billion, an increase of $429 million over the appropriations to date. The gross increase includes $856 million for the census, $124 million for other program increases, and $33 million for the so-called built-ins that President Bush now calls the wonderland budgeting.

Mr. Secretary, you have cut $546 million from EDA, trade adjustment, minority business, sea grant, coastal zone, NOAA, marine fisheries, public television, and are putting them out of business. You never know whether you are Secretary or you are a referee in bankruptcy.

I would emphasize, Mr. Secretary, we are particularly pleased to have you as Secretary, and we like your interest in trade, and in trying to bring about competition in our international trade as a result of the trade policy, which is still lacking.

I now yield to the distinguished former chairman of this subcommittee who still acts as chairman.

REMARKS OF SENATOR RUDMAN

Senator **Rudman**. Thank you, Mr. Chairman.

Mr. Secretary, we are delighted to have you here, and I know there will be a number of questions. I look forward to hearing your opening statement, and I would just warn you that although this is billed as a hearing of the Committee on Appropriations, Subcommittee on Commerce, Justice, State, on your appropriation and your budget, under the chairmanship of my dear friend from South Carolina, this will be a trade hearing in the great tradition of every other hearing that we have had here.

Senator **Hollings**. Right.

Mr. Secretary, your entire statement will be included in the record. You can give it in full or highlight it as you wish.

OPENING STATEMENT

Secretary **Mosbacher**. I have a statement that is a short one, Mr. Chairman.

Senator **Hollings**. Right.

Secretary **Mosbacher**. I would be glad to give you that if it pleases the chairman.

Senator **Hollings**. Yes, sir.

Secretary **Mosbacher**. Mr. Chairman, Senator Rudman, and members of the subcommittee, I am here to present the Commerce's budget request for fiscal year 1990.

President Bush has made clear his intent to work with Congress to cut the deficit. I am no less committed to working with you to shape Commerce's programs for fiscal 1990.

1990 will be the year of peak operations for the decennial census, the Nation's bicentennial census. The data collected in the 1990 census will form the basis for business and Government decisions for years to come. To fund the census, the budget includes $850 million above the 1989 amount available. The budget request for economic affairs includes a total of $18 million to improve current programs in business, manufacturing, and foreign trade statistics, as well as key demographic programs.

Competing successfully with other industrialized countries in the search for markets must be one of the Nation's goals. Promoting science and harnessing new technology will be critical ingredients to any successful competitive strategy. In 1988, Congress established the Technology Administration to coordinate the Government's efforts to enhance international competitiveness through new technology. The budget request includes $4.1 million to fund the new organization.

The National Institute of Standards and Technology's 1990 budget request proposes to accelerate commercialization of new technologies in areas such as light wave research, bioprocessing, and high temperature and superconducting materials.

Commercializing new technology requires an efficient patent process. In 1990, the Patent and Trademark Office will continue to develop the automated patent system and to streamline the patent review process. Patent and Trademark Office's 1990 request maintains patent pendency at 18 months throughout 1990. As you know, that is a reduction, quite a bit lower.

International trade is the principal arena for competition among the world's industrial powers. Ensuring that America's free trade policies are matched by our trading partners, encouraging American exports and administering the trade laws are all parts of Commerce's contribution to the Nation's efforts in this area.

The International Trade Administration is requesting funding to implement provisions of the Omnibus Trade and Competitiveness Act of 1988; to implement the United States-Canada free trade agreement and to offset the United States and Foreign Commercial Services' loss of purchasing power overseas.

The Bureau of Export Administration needs funds to satisfy expanded statutory requirements for foreign availability assessments and to compile an emergency preparedness data base. Commerce is studying the Bureau's field resources. Until the study is complete, three regional offices will not be opened. Funds for any such offices are not part of the 1990 request.

In a better America, we will protect precious natural resources. The National Oceanic and Atmospheric Administration's request for 1990 includes $12 million for an integrated program in coastal ocean science designed to improve monitoring, prediction, and understanding of the coastal oceans.

NOAA's request proposes a modernized and restructured National Weather Service. The 1990 budget request includes funding for acquisition of Doppler weather radars, the automated surface observing system; and class VII supercomputing capabilities. NOAA will also continue development of a cost-effective replacement for the Weather Service's current communications system. We believe that the new Weather Service will be an efficient, cost-effective way of providing local forecast services.

Under the 1990 proposal, NOAA will continue procurement of the next series of geostationary and polar-orbiting satellites. NOAA is also requesting funds to complete procurement of Landsat 6 under the established commercialization program.

Because of the budgetary difficulties which confront us, Commerce has had to review its priorities and identify those programs which are properly the Federal Government's responsibility and which offer opportunities to begin solving important national problems.

To fund these important initiatives and stay with an acceptable budget total, we are not requesting funding for several programs which do not meet these stringent tests.

The budget assumed that the activities of the Minority Business Development Agency would be transferred to the Small Business Administration. I have obtained a reversal of this decision. MBDA will remain in Commerce.

In order to provide flexibility in deploying resources in a time of fiscal constraints, we are requesting authority to transfer up to 2 percent of amounts appropriated from one account to another, subject to congressional ratification.

This is my first budget as Secretary of Commerce. While I inherited much of it from my predecessor, I believe it represents a forceful, thoughtful approach to the challenges facing Commerce. It focuses resources on critical issues and demonstrates a realistic appraisal of what the Nation can afford.

PREPARED STATEMENT

I have no hesitancy in asking you to approve it. I look forward to working with you on this and the other issues that will confront us.

[The statement follows:]

STATEMENT OF ROBERT A. MOSBACHER

Mr. Chairman, Senator Rudman, and members of the subcommittee, I am here today to present the Department of Commerce's budget request for fiscal year 1990—a total of $3.1 billion, roughly $400 million more than the appropriation for fiscal year 1989.

The 1990 budget before you is the one submitted by former President Reagan on January 9. As you know, on February 9, President Bush announced his budget plan. The administration's plan, among other things, calls for a freeze at 1989 levels in the aggregate for a number of domestic programs. Many Commerce programs are in this category. The Bush administration has begun negotiations with the Congress on the budget plan as a whole, including the freeze category. Nevertheless, I believe that the Reagan proposals provide a useful place to begin discussions of Commerce's programs.

This is a forward-looking budget—a budget that calls for investments in America's future. Commerce's responsibilities include areas vital to the strength and vitality of this Nation. In these areas, we have sought to make key investments that will pay dividends for the future.

This is a prudent, realistic budget—a budget which recognizes tight fiscal restraints. Commerce's request is consistent with the President's plan to meet the Gramm-Rudman-Hollings budget targets without raising taxes. It sets clear priorities and addresses the important challenges facing the Department.

President Bush has made clear his intent to work with the Congress to solve the Nation's deficit problem. I am no less committed to working with you to shape Commerce's programs for fiscal year 1990.

1990 COMMERCE BUDGET

1990 will be the year of peak operations for the 1990 decennial census—the Nation's bicentennial census. April 1, 1990 will be census day. During the year, the Bureau of the Census will operate 7 processing and 493 district offices; hire almost 500,000 temporary employees; and collect and process data from 106 million households.

The data collected in the 1990 census will form the basis for vital business and Government decisions for years to come. It is critical that the census proceed smoothly and successfully. To fund the bicentennial census, the budget includes $850 million above the 1989 amount available, right on target with initial projections for a $2.6 billion, 10-year 1990 decennial effort.

Economic affairs, including the Bureau of Economic Analysis (BEA) and the Bureau of the Census, produces a wealth of economic and demographic data for public and private decisionmakers. A large portion of the Nation's most essential economic statistics are prepared and published by BEA, including the gross national product, the international balance of payments, foreign investment data and many important business indicators. The budget includes a modest $1.7 million to maintain and, wherever possible, improve the quality of these economic statistics.

The budget request for economic affairs includes a total of $18 million to improve or expand current programs in business, manufacturing and foreign trade statistics as well as key demographic programs, including the current population survey and the survey of income and program participation. Proposed initiatives will adjust current programs to reflect changes in the economy; take advantage of new statistical methodologies; and supplement or replace inadequate data sources. The Bureau of the Census will launch a new survey of business investments and will overhaul the processing system for the current population survey.

Competing successfully with other industrialized countries in the search for new and expanded markets must be one of the Nation's foremost goals. Promoting science and harnessing new technology will be critical ingredients to any successful competitive strategy.

In 1988, Congress amended the Stevenson-Wydler Technology Innovation Act and established the Technology Administration to coordinate the Government's effort to enhance international competitiveness through new technology. The Technology Administration will promote increased productivity through technology transfer and strengthen industry's participation in discussions of technology issues at governmental and international levels. The budget request includes $4.1 million to fund the new organization, of which $3.1 million reflects the transfer of existing programs.

The National Institute of Standards and Technology's 1990 budget request proposes to accelerate commercialization of new technologies. Light wave research will promote development of fiber optics systems. Bioprocessing studies will assist conversion of laboratory results into commercially viable products. Additional funds are also needed to expand research on high temperature, superconducting materials.

Commercializing new technology requires an efficient patent process. In 1990, the Patent and Trademark Office (PTO) will continue to develop the automated patent system and use the latest automated tools to streamline the patent review process. PTO is implementing the recommendations of the independent review panel—to streamline project management, reduce costs, and improve overall system performance. PTO's 1990 request also includes the funds necessary to maintain patent pendency at 18 months throughout 1990.

President Bush recognizes that education is another key ingredient for a successful, competitive America. PTO is requesting funds for project XL, designed to stimulate creative, critical thinking and problem-solving skills among the Nation's youth.

International trade is the principal arena for competition among the world's industrial powers. Ensuring that America's free trade policies are matched by our trading partners, encouraging American exports, and administering the trade laws are all parts of Commerce's contribution to the Nation's efforts in this area.

The International Trade Administration (ITA) is requesting additional funding to implement provisions of the Omnibus Trade and Competitiveness Act of 1988—to support international barter and to process the additional workload generated by the act's anti-dumping and countervailing duty provisions. Funds are also needed to implement aspects of the United States-Canada free trade agreement and to offset the U.S. and foreign commercial service's loss of purchasing power overseas associated with the decline in the value of the U.S. dollar.

ITA's 1990 budget also reflects the statutorily required transfer of the costs of various overseas operations, formerly funded by the Department of State, to ITA. The Department of State's budget reflects an offsetting reduction.

The Bureau of Export Administration needs additional funds to satisfy expanded statutory requirements for foreign availability assessments and to compile an emergency preparedness database. The bureau's increased productivity in processing export licenses and the reduced number of processing actions caused by recent changes in the Trade Act will generate significant savings for the bureau. As the Congress has directed, Commerce is studying the bureau's field resources. Until the study is complete, new regional offices will not be opened. Funds for any such offices are not part of the 1990 request.

In a better America, we will protect precious natural resources and be sensitive to the fragility of the global environment. The National Oceanic and Atmospheric Administration's (NOAA) request for 1990 includes $12 million for an integrated program in coastal ocean science designed to improve monitoring, prediction, and understanding of environmental degradation of the coastal oceans. NOAA's initiative is one part of a government-wide effort proposed in the 1990 budget.

NOAA's request proposes a comprehensive program for a modernized and restructured National Weather Service. The new weather service will provide improved forecasts and warnings from 115 forecast offices by 1996. The 1990 budget request includes funding for acquisition of doppler weather radars, the automated surface observing system, and class VII supercomputer capabilities. NOAA will also continue development of a cost-effective replacement for the weather service's current communications system.

The new weather service is an area where I want to work particularly closely with you and the Congress as a whole. As required by Public Law 100-685, the administration has submitted a strategic plan for a modernized and restructured weather service. Commerce is determined to maintain the quality and coverage of local weather forecasts. We believe that the new weather service is an efficient, cost-effective way of doing so. We will spare no effort in explaining and demonstrating this to the Congress and the public.

Under the 1990 proposal, NOAA will continue procurement of the next series of geostationary and polar-orbiting satellites. The proposed reductions reflect normal fluctuation of estimated procurement costs and the need to restrain spending. NOAA is also requesting funds to complete procurement of landsat 6 under the established commercialization program.

Because of the size of the budgetary difficulties which confront us, Commerce has had to review its priorities and identify those programs which are properly the Federal Government's responsibility, and which offer opportunities to begin solving important national problems. In order to fund these important initiatives and stay with an acceptable budget total, we are not requesting funding for several programs which do not meet these tests—economic development assistance programs, trade adjustment assistance, sea grants, coastal zone management State grants, various fishery grant programs and the public telecommunications facilities grants.

The budget request also assumed that the activities of the Minority Business Development Agency (MBDA) would be transferred intact to the Small Business Administration. I have obtained a reversal of this proposal. MBDA will remain in Commerce.

In order to provide greater flexibility in deploying resources in a time of fiscal constraints, we are requesting authority to transfer up to 2 percent of amounts appropriated in the current fiscal year from one account to another. Transfers would be subject to congressional ratification. Transfer authority would, in particular, increase our ability to minimize programmatic disruptions caused by across-the-board reductions.

This is my first budget as Secretary of Commerce. While I inherited much of it from my predecessor, I believe it represents a forceful, thoughtful approach to the challenges facing Commerce. It focuses resources on critical issues and demonstrates a realistic appraisal of what the Nation can afford. I have no hesitancy in asking you to approve it. I look forward to working with you on this and the other issues that will confront us.

ANTIDUMPING COSTS

Senator HOLLINGS. Mr. Secretary, let me begin with the exporters' sales tax offset, instrumentalities and practices that have come about from previous Secretaries over the years. It has actually taken them to the highest court, and the court found that where it wasn't provided for it wasn't prohibited. It was a matter of discretion.

Have you had an opportunity to look into this specifically? It is decimating us in dumping cases. If I have a table and chair, and the table and chairs cost less than $1,000 on the domestic market in Tokyo, they ship them for sale here in Washington. Necessarily, you deduct the cost of insurance and freight, but under the Secretary's discretion, we also deduct the promotional cost and sales cost of profit.

Not so in any other jurisdiction. Europe allows a salary, but not the sales cost of promotion and profit. Let's say that $1,000 annually deducts to a couple of hundred dollars. That is enough to take over market share.

So we bring the dumping cases, and they come and disprove the dumping cases, all due to that falacious report by Commerce. We had it set up, frankly, in the omnibus trade bill, but then it was threatened with veto, and the lobbyists got downtown before we could.

Maybe, since you have got a good understanding of business, have you had a chance to look at that?

Secretary MOSBACHER. No; we have talked a little about what constitutes antidumping costs, but I would like to get into it in further detail and get back with you on that question, unless these gentlemen have something to add.

HIGH DEFINITION TELEVISION

Senator HOLLINGS. All right. Along that same line, I want to discuss high definition television in your Department. Senator Rudman and I over on defense appropriations where we serve, have no difficulty getting $30 million for high definition television.

But Defense, you see, is only getting into what we call the displays and displays processing. It will not cover the commercial angle like the broadcast technologies. I am trying, since you are the Secretary and your Department is to set the policy in trade, to get those things now that really have a greater commercial application and impact on the international competition we all talk about. What have we done on that?

Secretary MOSBACHER. Well, I have had many informal visits with people in the electronics area, associations, and individual companies. I have a formal meeting May 10 with an advisory committee on high definition television.

Certainly, in my view, we need to have industry-led policy on this, an industry-formulated policy where we can work with them rather than come up with some kind of an industrial policy that is never efficient and never effective.

We have talked, we have looked at alternatives such as the RCA model; alternatives such as making sure that we recommend to Congress reduction of the antitrust laws and that they conform; with consortia, not only with R&D workings, but the actual manufacturing.

Another aspect of it that I think we are all going to have to give some very serious and very quick attention to is the formation of standards in this area, I think what you are referring to.

Senator HOLLINGS. That is the idea. If Commerce can set the standard, you see, it isn't between Government and private; it is between Defense and Commerce. We are going to get a Government policy out of Defense, and we continue to do that. I am trying to get a commercial policy out of Commerce. We both believe in private enterprise, and not trying to invade their ingenuity and practices in the free market in any way, but our Government needs to give that assistance.

We do it for farmers. We did it with respect to oil import quotas under President Eisenhower. We do it with respect to all research coming into the Department of Defense. In fact, that is how we support our space program. We also have that authorization in our Commerce Committee, Commerce, Space, Science, and the way we sell it is not in saying everybody is going to get a trip to the Moon, but we talk about the commercial spinoffs that come.

So no one says, "Oh, we don't have a Government space policy. We couldn't wait on the private." We can't wait on the private sector to get thoroughly into high definition television when the Japanese commercially have their government going all the way into it; I mean as fast as they can, subsidizing and everything else.

Secretary MOSBACHER. I think there is a combination, and I don't think the Defense Department, particularly DARPA, is very aware that the way to make HDTV activity go could be the commercialized end of it. It has got to be the biggest part. The Defense end is important, and, of course, they have authorized the first $30 million, as you know, to help in the research and development. Of course, that is not a lot of money, but that is the start of the project.

But I think we are working very well with DARPA. We are working well with the private sector, because unless we get a base that is in commerce—and I don't mean the Commerce Department, but in the private sector—we can't afford, just through the Defense Department, to compete with what the Japanese are doing. So we have got to do it together.

And there is doubt. I just had a great visit yesterday in Dallas with the Texas Instruments people who are the No. 1 makers of the memory chips. There is no doubt that we need to have American companies very much involved in this HDTV if we want to stay as a player in the D-ram and the other memory chips and all the semiconductors in this world.

We have got to be in the game for HDTV. HDTV, as you know, is much more than a step forward in television.

Senator HOLLINGS. They are going to take over the computer business.

Secretary MOSBACHER. Yes; and that is it.

TECHNOLOGY CENTERS

Senator HOLLINGS. That is my point. Jumping quick on account of the vote in the Senate, with respect to our technology centers. You talked about implementing the omnibus trade bill. The important part for Commerce under that omnibus trade bill is the manufacturing technology transfer centers. We all pick out our various rollcalls, and on this one it was 98 to nothing. On the technology centers we have nothing in this budget for next year.

You have got $4.1 million for the new Under Secretary's office, but nothing for the administering of the centers already awarded, namely, $1.2 million shy in the NIST; and funds for three new centers, or $9 million, at $3 million apiece. There is no request.

Secretary MOSBACHER. Mr. Chairman, we have got, the way I understand it, we do have the $1.9 million per center for the three that have been opened.

Senator HOLLINGS. That has already been appropriated.

Secretary MOSBACHER. That is in the 1990 budget.

Senator HOLLINGS. No; wasn't that already funded this year?

Mr. KANE. That was appropriated in 1989.

Senator HOLLINGS. That is 1989 money.

Mr. BROWN. That will take it through 1990.

Secretary MOSBACHER. It takes it through to 1990. The amount of money is $4.9 million in the budget. It is scheduled to be spent in 1990.

Senator HOLLINGS. But there is no new Federal money for the $1.2 million to administer for next year or for any additional centers.

Secretary MOSBACHER. Well, my view of that is that we ought to make sure the three that are open are properly funded. Let's look at these; make sure that they are doing the kind of quality job, and I am sure they will be, so that when we go to the next centers, we know what we want to do, and we know that they are done in top quality, Senator.

So I suggest that we work together in making sure these three centers are the best and use them as a real example and a standard for the new centers for deployment in looking over them.

Senator HOLLINGS. We have to apologize, Mr. Secretary. If you can yield, we will recess for 5 minutes.

Senator BUMPERS. Mr. Chairman, I am not sure I am going to be able to come back.

Senator HOLLINGS. Go right ahead.

Senator BUMPERS. No; my point is that I will submit questions for the record if I don't make it back, but I do have a couple of things I want to get into with the Secretary, and I will try to get back.

Senator HOLLINGS. All right.

Senator KASTEN. Mr. Chairman, I will not be able to come back, and I would like to make the same request.

Senator HOLLINGS. Yes, sir.

Senator STEVENS. And you are lucky I will not be able to come back, either.

Senator RUDMAN. You are lucky. [Laughter.]

[A brief recess was taken.]

WAITING FOR QUALITY

Senator HOLLINGS. I would like to discuss the technology centers further.

Secretary MOSBACHER. What little studying I have had a chance to do on this, indicates to me that many of our education centers—and I will talk about any of these three—but we don't seem to be up to the quality standards that we need to have, both in education and in the kind of quality back into the industries in the area.

What I would like to see us do is use these three to make sure that we have got our quality standards up high enough and every one that opens after that has to match this kind of quality standard so they are really effective as a method of getting our young people or, in some cases, continuing to educate people up to their standards when they go into the firms, go into the businesses to do that kind of job. Otherwise, if our industry doesn't get up to worldwide standards, we will never get back.

Senator HOLLINGS. Well, no one can argue that, everyone wants quality, and everyone wants the highest in standards. We have the land-grant colleges, which have the highest standard. They work. They have not only the regional research; they have experimental stations; they have the outreach programs. If I wanted to plant a victory garden, they would give me a soil test this morning at my house on Macomb Street right here in the District of Columbia. It is a program in agriculture.

In a similar fashion, if you want quality, the one that tops the list is Rensselaer and the other ones coming on down in my back yard is we have this outstanding technical training complex that works with the universities and everything like that.

Now in Washington these things are almost like styles that come through this town. Everybody is talking about quality, quality, quality, and everybody wants to get math and science. Math and science and quality, it is almost a whiz kid kind of a concept. Not at all. They are producing.

Let's get right to Mexico. General Motors has gone down there with five factories, not because the quality Mexican worker is better than the quality Texas worker. You can produce quality if you get into the right technical arts and everything else.

That was the whole thing about developing our Sunbelt and the carpetbagging from New Hampshire. We would bring all the industries down, not because we were smarter and got quality and they were better in math or better in science or any of that. We can just learn quick. You will find this farm crowd in Texas and this farm crowd in South Carolina with their hands can learn the best of skills. So I am moving Digital off of Highway 128 in New Hampshire, and down to Greensboro.

Senator RUDMAN. That is sure news to me, Mr. Chairman. [Laughter.]

Senator HOLLINGS. They have got 85 percent of the press boards for computers. You and I were just discussing computers. You give me all the quality tests. You know, the Massachusetts complex and the Lincoln Center and all these other things up there in the Ivy League. Oh, they have got quality. I will be dead and gone trying to get that quality.

So what we are trying to do is get back over to results, and if we can put in these, and you can't get any better than Rensselaer and the Cleveland complex. They are all really quality institutions, so they are not going to just take the money and run and let it languish.

The competition is there. We have the Japanese in South Carolina, we have 20 good Japanese industries. We are getting more. I have got Korean industries. That is a funny thing. We have all the politicians up here in the Congress saying, "Oh, oh, get them out, get them out, they are buying too much," and every Governor is running around all over the world, saying, "Come in, come in. Buy into America, come on in" and everything else like that. There is no discourse or continuity between the real programs we have, which are really the State programs.

This crowd up here in Washington, they can't even pay the bills. You can't survive at the State level unless you do pay the bills. You can't get Japan or Texas or New York to invest in South Carolina unless you have got a triple A credit rating and maintain it.

So back on that particular point, you have got to look to those who really are training for the skills, and I found out that I can go around here and get ahead of that curve by putting in that fellow who says that his mother is working in the restaurant; his father is driving that cross-country rig. He says, "I'm not going to travel to Spain or France so I don't need the languages. I'm not interested in the sciences. So I'm quitting."

We have dropouts, but not dropouts on account of lethargy and insolence. The majority of dropouts are on account of ambition. He says, "I am going to work to help that family." We say, "Come over to this technical training center and rather than making the $3.35 or $4.25 an hour, we can give you 4 months of training and you can get $11 an hour at Lockheed." And we put them in the tech centers, and they snap it up like that, and we keep going and we keep moving.

So don't get impugned. I know when you get into Georgetown drawing rooms you hear about quality. Everybody bows and sips their martinis and talks about quality. We will be dead and gone, you and I both, before we get quality to satisfy that crazy crowd.

We do need to go ahead with these centers and put the money to them. They have got $30 million just for the Defense Department's part of HDTV, but I can't get $30 million to get to commercialization about technology. We ought to be embarrassed at the Commerce Department. What is the matter?

They don't even give you a name over there at OMB, if I remember correctly. They won't even allow you to give a title to the director of the centers. All the Department of Commerce proposals over there, my records show, have been refused. They won't allow the office managing the centers program to even have a name.

We have got a stonewalling going on over at the Bureau of Budget. You have got to get on them about that, because they, and if they can slough you off with that quality routine, then we will just languish. Then the three that are there will barely be able to show themselves. You need to get about 30 of these rather than just 3 at outstanding institutions who are already proven. Let's get going so that the entire country has a chance with small business and everything else to have access to the techniques and the techniques that are going to be distributed through these centers so that they can all begin to get a result.

We hope you revise that request and support it in a strong fashion.

Let me yield there, because I have got questions on a lot of other things, census, and everything else. Let me yield to our leader here.

Senator RUDMAN. Thank you, Mr. Chairman. A lot of these hearings are usually videotaped. This one is audio taped. I thought I would probably help the deficit by producing a series called "A Morning with Fritz Hollings and Company." I could translate them. [Laughter.]

Senator HOLLINGS. This fellow is from down in my back yard. You better watch out what you are talking about. [Laughter.]

FSX DEAL

Senator RUDMAN. Mr. Chairman, I agree with a lot of your comments, and I do think that we really tend to get our priorities fouled up, as I look at some of the things that we are doing and not doing. I certainly share the chairman's views on what we ought to be doing in his last line of questions and comments.

Mr. Secretary, I want to commend you for doing something that you have got a lot of credit for; you deserve more. I think, were it not for your efforts, the FSX deal would have just gone right through the administration. I am not sure that it might not have hit the rocks in the Congress and still made it, but the fact is that you are a good soldier, and now you are a part of the administration's policy. But I think now all of us close to it understand that without your efforts, what has been done to renegotiate this deal in terms of all the protections of technology, trade rights, and coproduction would not have happened.

So we are very pleased with that. That is a major achievement in your first few weeks of stewardship of the Department. So we are very pleased with that.

I want to just comment on it. I understand that you are representing the administration's position, but I wonder if you might respond and still maintain your support of the administration for the project. My basic concern is that the Japanese have essentially lectured us about what they call the doctrine of comparative advantage—which, loosely defined, simply says that what other countries produce, well, we should buy and have open markets, and what we produce better than anyone else, then we ought to sell to them.

I was just looking at some figures which staff put together for me. We ran a $17.9 billion surplus in aerospace trade in 1988, nearly $18 billion. If there is anything that Americans do well, and nobody can argue about it, it is when we combine airframes, avionics, electronic countermeasures, we produce the world's greatest aircraft, particularly the world's greatest fighter aircraft. If anybody doesn't believe it, ask any of the Mig pilots who have come up against our aircraft operated by the Israeli Air Force.

Yet the doctrine of comparative advantage doesn't seem to be working here. I guess my question is: What is it about the Japanese attitude that would have them not simply buy this aircraft as an upgraded F-16? We both serve on the Defense Subcommittee. We both know the classified aspects of the programs, and the fact is that the FSX, when it is finally developed, is going to be an upgraded F-16. Nobody really disputes that.

I don't see it as a technology issue. I see it as a trade issue. Why hasn't the administration just said, "Look, we have got this $52.1 billion trade deficit that we are running with you. You ought to, you know, invoke your own doctrine of comparative advantage."

I suppose they are going to say, "Well, it is a matter of national honor. We have to have our own fighter aircraft." I think I can respond, "It is a matter of national honor. We ought to have our own HDTV and just might do that."

What is the problem with that? Why won't they just buy it from us and simply say, "You do it well; we are going to buy it"?

Secretary **Mosbacher**. I could cop out on that and say that deal was made not on my watch.

Senator **Rudman**. That is true.

Secretary **Mosbacher**. But I won't. I think and I believe that the previous administration, a number have told me, made every effort to sell the F-16's. They held out as long as they could. Since it wasn't on my watch, I just certainly take their word for it that they tried as hard as they could to sell the F-16.

They came to the conclusion, after the Japanese said, "No way" in several different ways, that the Japanese would do one of two things: They would either proceed on their own and design and build their own aircraft or that they would do it in conjunction with other countries. That would be the European countries.

I think at that time they came to a conclusion, "Well, this deal is better than not being a part of it at all."

Senator **Rudman**. They blinked, in other words, in Texas lingo. They blinked.

Secretary **Mosbacher**. I am not going to say that about them. Whatever they did is part of——

Senator **Rudman**. I will.

Secretary **Mosbacher** [continuing]. Whatever they did, you know, there is nothing from my standpoint like 20/20 hindsight. I can say that I would have done it differently, but I don't know. I wasn't there.

Senator **Rudman**. What is the status of it at this time?

Secretary **Mosbacher**. All we have done is, within the context of an MOU, which will be subject to congressional review. It is a contractual obligation from the United States of America. We signed that, and I think with that caveat of congressional OK, it is the giving of our word as a country, from the executive branch.

Having done that, we have worked within the parameters of that general understanding, improving it legitimately, just as some gentlemen in this room in their previous lives as attorneys, you know how attorneys can take a general memo of understanding and work within it.

That has been done. It is now, in my mind, sanitized to a degree that it would not allow the Japanese to have any real capability other than in this one item and would not allow them to become a major competitor for us in this, which is the No. 1 exporting business of this Nation.

Now, the ball is in their court at this point.

JOINT VENTURES

Senator **Rudman**. What about the coproduction? That has still not been finally decided in terms of what percentage that might be. If you are unable to talk about it this morning, we can understand that.

Secretary **Mosbacher**. To the degree I can discuss any of this, and in a certain aspect I can, I think you know how important that aspect of it is to us. That is probably all I can say.

Senator **Rudman**. I understand that it is a sensitive negotiation. I have been asked by a number of Japanese television stations and newspapers to talk to them this week, and I just might do that.

One of the issues that is rumbling around the halls here, and I have talked to some on it—you may want to respond to it, you may not—is that for the reasons the chairman and you discussed, HDTV is far more than having people being able to watch the Super Bowl with a sharper image. It is a lot more than that.

In many ways, it really connects to the whole next generation of a lot of electronics, computers, displays, and so forth that this country has great interest in, both from a security point of view and from a commerce point of view.

I am seriously considering, with others, trying to get legislation passed here—overwhelmingly, so it will be veto-proof, if the President ever wanted to veto it—that essentially says that all HDTV that is sold in the United States in any form in any connection essentially be that of an American manufacturer that could be coproduced with any country including Japan.

I think we ought to give the Japanese a taste of their own medicine, because I happen to believe HDTV is a very key issue in terms of jobs, employment, and prosperity to this country over the next 20 years. As we are having a shrinking industrial base, this looks to be the one part of the industrial base that could expand, and I don't think that there is anything particularly unusual about a country saying, "This is something we feel we must have produced here but if you wish to coproduce with us in joint venture," then that is fine.

Do you find anything outrageous about that proposal?

Secretary **Mosbacher**. Well, I find, obviously, I have mixed emotions. I am a dedicated free trader, as long as it is a two-way street and as long as the other country opens its market as we have opened ours. So that to the degree that it is against free trade, I am against it.

To the degree that there is not free trade and other countries don't open to American markets, then we cannot continue to be a unilateral free trader anymore than we can be unilateral in disarmament.

Senator **Rudman**. Mr. Secretary, I agree with your answer. Every vote I have cast here, with very few exceptions, has been for free trade. But I can document and will furnish you for your background some stories from some companies in New England that produce products that are better than those the Japanese produce, that are lower priced than those the Japanese produce, that are technically at the leading edge of their particular technology. They cannot break into Japanese markets, not because of anything that the law says in Japan, but because of the wonderful way they have of closing markets to all but their own industrial infrastructure.

And that is the way they do it. We all understand it. I mean, they can pass all the laws they want, but they have a system there that is almost a conspiracy to give their fledgling industries an opportunity to finally get into that market at which point the American goods no longer can compete.

I think we are in for a long year or two on this subject, and I expect we will be talking about it more. But I do, again, want to reiterate my feeling that you deserve a great deal of credit and thanks from a lot of people for what you did, because I am convinced that without you, we would be in a different situation.

NORTH PACIFIC CABLE

I have some fairly involved questions on some telecommunications issues involving the north Pacific cable, which is going to connect Japan and the northern United States and Alaska, which is a very interesting situation; again, a trade situation where a United States company—it happens to be a New Hampshire company, Simplex Wire & Cable, internationally famous, is acknowledged as the company that does extraordinary work in fiberoptics, and so forth, great facilities, and ocean-going vessels to do it—is going to get cut out of it, even though it is a system that the FCC says should have American participation.

There is going to be a Japanese venture with a British company that is going to build the cable. I am going to get you some things for the record on that, because I think it is something that you as well as the FCC had better look into it.

I want to send you some questions on the Export Administration offices, which we talked about briefly the other day, and also some questions on the U.S. Travel and Tourism Administration and the use of those funds. I don't want to take the time of the hearing to get into those issues. But particularly on the cable issue, a very important issue in terms of trade, and I will get information to you for the record on that.

Secretary **MOSBACHER**. Thank you, Senator. That is specifically the kind of issue that I consider an obligation complication of Commerce to look into and make sure that American companies really have a fair shot at it. I will promise you I will pursue that.

Senator **RUDMAN**. You will enjoy this one, Mr. Secretary, because this makes a pretty good case.

TRADE ISSUES

Senator **HOLLINGS**. On that score, I certainly give you credit. I called and gave the Secretary credit and told him the tremendous support he had over on the Hill for his leadership on the FSX, and it was true. We felt it around here for the first time that thank the Lord, we have got a Secretary that is willing to fight and set some trade policy.

Now all we have got to do is just forget about that free trade. That sounds good for the editorialists. It is market trade, and what are the market forces? The reason I said editorialists is because I got editorialized in blasphemy by the Washington Post and the New York Times that said the Congress got $4.2 million, I think it was, in the last two elections, in PAC campaign contributions.

Well, I knew I hadn't gotten hardly any of that. My crowd of Republicans, and I have some, like my friend Roger Milliken who said, "I just don't contribute to a Democrat." [Laughter.]

You know, that sort of intrigues me. I wondered how much they got from the retailers, because they write all of these editorials for them and everything else, you know, for a cheap product. We didn't organize the Government to get everybody a cheap price.

Can you see Madison and Jefferson and Hamilton saying, "Let's get together and get a constitution so we can get a cheap price"?

Well, in any event, the Washington Post had, in 1987 $1 billion in income. They made $1 billion, and $893 million was from retail advertising, 89.3 percent. They bring in this coat, this shirt, that blouse, or shoe and everything else, manufactured in Taiwan, or manufactured in Korea or Japan, and they were selling them all for the same price, United States and foreign manufactured alike. They weren't selling them cheaper. They were just making a bigger mark-up. That is the tail wagging this dog about the free market syndrome, and writing about free market, trade war, trade war, trade war.

That is nonsense. It is market forces and what is the market. We have worked the market in agriculture, and we set the example. We put in not only price supports, but protection, protective quotas to protect that agriculture and subsidies of the Export-Import Bank, and it worked. Ten years ago, Europe was the net importer of the world's wheat. Last year, they exported 20 percent because they have now got into the subsidies, and now that is why the EEC is combining to at least break down the barriers and the subsidies between themselves.

In a similar fashion, Indonesia, 5 years ago, was the largest importer of the world's rice. Now they not only produce all they consume, but they are the largest exporters. My friend from Arkansas is jumping up and down saying, "Something is wrong with the rice business."

We are meeting that kind of market force with the governments coming in like we did agriculture. The truth is like with the airplanes, the majority of the Export-Import Bank is not for agriculture subsidies but for airplane subsidies.

Now, that is the market, and I continue to vote for it because that is the only way we are going to meet it. It isn't, "What is wrong with them?" You have got to make it to their economic interests. Political cajoling and exorting and pontification aren't going to make it. I was down in the Fish Room 30 years ago, and I keep on going down there. They are still down there saying, "We are going to do this, and we are going to do that' and nothing happens.

So the average good businessman says, "I have no time to fool with the politics and the Washington lawyers and dumping cases with the Department of Commerce. I have got to get going."

The majority of all those imports are American multinationals coming back in. They move their production offshore and not because they got quality. So it is the market forces, and we have got to look at what makes it to the Japanese economic interest. I don't blame Japan; I don't bash them.

Our problem is, as the Senator is pointing out, is not only is it a $52.1 billion trade deficit; I am sending them $6 billion a month to finance my deficit caused by defending them. I am paying to defend them, running up a deficit to do it and then, by gosh, sending them the interest cost.

Their Treasury bill is 4 percent. Ours is 8.6 percent. So I guess when the President arrived over there at the funeral, he said, "I come with great news: interest rates will stay high." [Laughter.]

And we sit around here and smile and all, saying, "What is the matter with them?" It is not what is the matter with them. It is what is the matter with us. We have to awaken market forces, not politicians; market forces do operate, and that is what we mean when we say free market, and in order to get it more free, you raise a barrier to remove a barrier. That is the only way to make it happen; that is economic competition.

In that light, I hope we will continue to look at the policies over there; at the Trade Administration; the exporter sales price offset; and the high definition television. We have got to not worry about the philosophy about an industrial policy. We have got one whether we want it or not. It is a sad one. We have got to beef it up.

All countries do. We started it. The Japanese emulated it. Now we are confronted with the Pacific Rim whereby in the year 2000—11 years away—the Pacific Rim GNP will exceed that of the United States and Europe combined. You can't fuss with success. Mark that down, and you are the head of Commerce over here. We are going out of business, and you are putting us back in business. So I join with Senator Rudman on that score.

CENSUS FUNDING LEVEL

Now, with respect to the census, do you think you can get by with $2.6 billion overall? The reason I ask is the plan is to pay an enumerator $5.50 per hour, about the same as they pay at McDonald's, I just don't know that we can do that. There is a GAO study.

Secretary **Mosbacher**. Well, yesterday, I met with some people in Texas once more in a hearing.

Senator **Hollings**. That is all right.

Secretary **Mosbacher**. When I went to Texas, I asked the regional head of the census how he was doing at hiring, and he was doing well. Now the Texas economy hasn't been that good. New England may have more trouble, and South Carolina, in that area, an area with low unemployment.

We are going to see if we can do it. We think we can. It appears to me that we can. If we find we can't get the people, we will come back. We are, frankly, doing some checking, too, on what sort of requirements we would make of employees. We want to have employees who can properly follow directions.

SURVEY OF THE DISABLED

Senator **Hollings**. I will include in the record a letter received from Senator Paul Simon with regard to his interest in a survey of the disabled. The Senator says that the Federal Government spends $66 billion per year on programs serving the disabled, yet we have no reliable information on the disabled population.

Senator Simon suggests the inclusion of $200,000 for 1990 from Census to draft a plan for a survey of disability and activity limitations. I would appreciate your comments on this as well as an estimate of the costs of conducting such a survey.

[The letter and comments follow:]

LETTER FROM SENATOR PAUL SIMON

MARCH 11, 1989.

Hon. FRITZ HOLLINGS,
Chairman, Subcommittee on Commerce, Justice and Related Agencies, S-146 Capitol, Washington, DC

DEAR FRITZ: The 1990 census offers an excellent opportunity to address the need for comprehensive information about this country's disabled population and to provide more effective and efficient programs for them. Although Congress and the States have enacted a variety of measures to protect the rights of persons with disabilities and provide them with needed services, those in Government and the private sector who are charged with implementing these laws need better information. The Social Security Administration has established that Federal expenditures for programs serving persons with disabilities are about $66 billion per year, yet we have no accurate demographic data or descriptive information on the population assumed to benefit from these funds.

The 1990 census will not contain the items about disability that were requested by several interested organizations, including the Council on Disability and Demography, and will not provide the data and information currently being sought by both the public and private sectors. However, the limited information that will be collected on the census will make it possible to conduct a follow on survey that can provide detailed information about the kinds of conditions that limit activity, the differences in the disability population among States, and the number and conditions of children with disabilities. By conducting this survey as a part of the census activity, we will also have the benefit of using the descriptive information collected during the census in combination with the information collected during the survey.

While a considerable investment was made in planning for such a survey 10 years ago, the Reagan administration did not pursue this idea. In view of the operational complexity of the census, the next step would be to prepare a plan to implement the survey and begin preparations for it.

I would therefore like to request that you include $200,000 in the fiscal year 1990 appropriation account of the Bureau of the Census, together with instructions that they draft a plan for a survey of disability and activity limitations, begin developing procedures for the survey, and conduct a small pretest. The Bureau of the Census should be asked to include a report to Congress on their progress in their submission of budget estimates for fiscal year 1991 and at that time indicate the feasible alternatives for conducting such a survey and the likely cost of each.

Thank you for your assistance with a relatively small item that has potentially vast importance to millions of our fellow citizens.

My best wishes.

Cordially,

PAUL SIMON,
U.S. Senator.

DEPARTMENT OF COMMERCE COMMENTS

The Census Bureau periodically publishes disability data from the Current Population Survey (CPS) and the Survey of Income and Program Participation (SIPP). These surveys provide good national data but are not designed to provide detailed subnational estimates. The SIPP data are much more comprehensive than the CPS data. Since 1980, there have been three reports.

The proposal to conduct a post census survey of disability and activity limitations is not new. The long form questionnaire, sent to about 16 percent of the population, includes disability questions. Those questions could be used as a screener to select a sample that would provide comprehensive and detailed data at the State level, as was originally planned in conjunction with the 1980 census.

The 1980 Post Census Disability Survey plans called for a sample of 100,000 housing units; at least 50,000 would have been from households that indicated, in the census, they included a person with disability. In 1979 and 1980, the Census Bureau spent $231,265, as part of the 1980 Decennial Census follow-on surveys program, to plan and conduct a pretest. When the 1980 budget problems occurred, the Administration decided not to do the full Post Census Disability Survey.

The $200,000 suggested by Senator Simon would only cover the first year planning costs for a Post Census Disability Survey. A survey similar to that planned in 1980 would cost $15.6 million if data were collected for adults only and $20 million for adults and juveniles. The largest share (75 to 80 percent) of these costs would be in 1992.

Follow-on surveys were part of the budget and planning for the 1980 census. For the 1990 census, the Administration decided not to request funds in the Census Bureau's budget for follow-on surveys. Instead, some of the agencies who are primary users of certain types of data will reimburse the Census Bureau to provide data from census-related or follow-on surveys for their specific program purposes. The primary users of Census Bureau disability data are the Department of Health and Human Resources, including the Social Security Administration, and various inter-agency groups on disability.

EDA ABOLISHMENT

Senator HOLLINGS. You also have got to watch them closely with respect to the Economic Development Administration. At your confirmation, and I use your quote, you said, "The EDA is a very strong way to help disadvantaged areas and disadvantaged people." Amen.

Now, EDA is abolished under your request. What gives?

Secretary MOSBACHER. I said at the House hearing that I didn't request the money, but I do expect it.

Senator HOLLINGS. He is a Texan. [Laughter.]

Best hearing we ever had. [Laughter.]

Senator RUDMAN. Finally back to reality, Mr. Chairman.

Senator HOLLINGS. Yes; we got back to reality. [Laughter.]

That is right.

Secretary MOSBACHER. I thought you were ready to say I was a quick study. [Laughter.]

Senator HOLLINGS. Well, we need your support on it.

CHEROKEE RESERVATION WATER TREATMENT PLANT

STATEMENT OF CHIEF JONATHAN L. TAYLOR

Senator HOLLINGS. The subcommittee has received a statement from Jonathan L. Taylor, the principal chief of the Eastern Band of Cherokee Indians. This statement is in regard to funds for a water treatment plant.

The statement will be printed in the hearing record and we will be waiting for your comments on this, Mr. Secretary.

[The statement follows:]

STATEMENT OF JONATHAN L. TAYLOR, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS

I was not able to testify before your Subcommittee this year on the fiscal year 1990 Budget for the Commerce Department but I do want to submit the following statement and ask that you review it and make it a part of the hearing record. I hope that you can give this request every possible consideration.

I am asking the Committee to include funding in the fiscal year 1990 EDA Budget for a water treatment plant that is desperately needed on the Cherokee Reservation. As your Subcommittee has jurisdiction over the Economic Development Administration (EDA) within the Commerce Department, I feel that my request is within your Subcommittee's jurisdiction.

We felt that it would be appropriate to make such a request of your Subcommittee because this water treatment plant is not only crucial for residential use on our Reservation but is essential for commerce as well. Tourism is the very centerpiece to the economy of Cherokee, North Carolina. As we are adjacent to the Great Smoky Mountain National Park and the Blue Ridge Parkway, we get millions of visitors a year. The present water system is incapable of providing for our commercial and residential water needs and during dry summers we are going to run out of water. This happened to some homes and businesses last summer.

In addition to capacity limitations of our water system we also have the problem of potential asbestos contamination in our drinking water as the present system was built in the 1930's and still contains certain asbestos cement pipes. Present law requires the local newspapers to post drinking water citations at hotels and restaurants. You can imagine what such notices would do to our tourism. We will also not be able to meet the requirements of the 1991 EPA National Primary Drinking Water Regulations.

The present and future economic growth of our Reservation necessitates a new central water treatment plant.

Thank you.

LETTER FROM SECRETARY MOSBACHER

[CLERK'S NOTE.—As indicated above, the following letter was received from the Secretary of Commerce with regard to the statement of the Eastern Band of Cherokee Indians. By direction of the chairman the letter has been printed in the record.]

[The letter follows:]

LETTER FROM ROBERT A. MOSBACHER

MAY 26, 1989.

Hon. ERNEST F. HOLLINGS,
United States Senate, Washington, DC

DEAR MR. CHAIRMAN: Thank you for your letter regarding the request of Jonathan L. Taylor, Principal Chief of the Eastern Band of Cherokee Indians, for a $4.7 million line item appropriation in the fiscal year 1990 Budget for water system improvements, including a new treatment facility, for the Cherokee Indian Reservation in western North Carolina. The Economic Development Administration (EDA) and the Department of Commerce oppose Congressionally mandated projects which thwart the Agency's established competitive application process.

The Eastern Band of Cherokee Indians has been the recipient of eight EDA public works grant awards under this process. The most recent grant to the Tribe was awarded in 1987, and provided $300,000 to assist in renovating an amphitheater. Mr. Taylor should be advised to contact Dale L. Jones, EDA's Economic Development Representative for North Carolina, to discuss the merits of the proposal. Mr. Jones can be reached at Century Station, Room 128, 300 Fayetteville Street Mall, Raleigh, North Carolina 27601; telephone (919) 856-4570.

Sincerely,

ROBERT A. MOSBACHER.

CORRESPONDENCE FROM HON. TERRY SANFORD

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received a letter from the Honorable Terry Sanford of North Carolina on behalf of the request of the Eastern Band of Cherokee Indians. By direction of the chairman, the letter has been printed in the hearing record.]

[The letter follows:]

LETTER FROM TERRY SANFORD

MAY 12, 1989.

Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State, and Judiciary, Committee on Appropriations, S-146 Capitol Building, Washington, DC

DEAR FRITZ: I am writing to bring to your attention an important project for the Eastern Band of Cherokee Indians, in Cherokee, North Carolina. I would appreciate your assistance in obtaining an appropriation for a water treatment plant on the Cherokee Reservation.

The present water system is incapable of providing for the commercial and residential water needs of the Cherokee Reservation during peak periods. The water sources and storage have a maximum design capacity of 1.4 million gallons per day (MGD). In the recent past, the peak daily demands have exceeded the 1.4 MGD capacity, and a peak daily demand of over 2 MGD is projected within the next 10 to 20 years.

Built in the 1930's, the current system is also in ill-repair and contains asbestos cement pipes which may contribute to potential asbestos contamination of the Reservation's drinking water. Without a new treatment plant, the water system will not be able to meet the requirements of the 1991 EPA National Primary Drinking Water Regulations.

In addition, water limitations have hindered commercial and residential development on the Cherokee Indian Reservation. Seventy-five percent of the commerce on the Reservation is tourism-related, and the Reservation provided services for approximately 10 million tourist visits in 1988. To continue commercial and industrial growth, the Reservation requires an adequate water treatment plant.

The Eastern Band of Cherokee Indians has contracted with B.P. Barber and Associates (a professional engineering firm) to determine the water treatment improvements that are necessary to ensure an adequate water supply for the forseeable future. The firm drew up a two stage plan that would upgrade the current water system and extend water services into the remote and higher elevations of the Reservation where water service is currently unavailable.

Phase I, estimated at $4,750,000, includes the construction of a 3 MGD water plant and a 1 MGD storage tank, along with the upgrade of the Mission Road booster pump station, the replacement of 8,000 linear feet of transit pipe and 16,000 linear feet of cast iron pipe, and the construction of new water lines from the proposed water plant to the existing distribution system.

I hope the subcommittee will consider including a $4,750,000 appropriation for this project in the Commerce, Justice, State, and Judiciary Appropriations bill. If funds are unavailable for the entire project, I would appreciate the inclusion of a modest appropriation of $250,000 for engineering and design work on the project.

Thank you for your consideration of this important project. I will be happy to provide any additional information that you may require.

With best wishes always,

Sincerely,

TERRY SANFORD.

CORRESPONDENCE FROM B.P. BARBER & ASSOCIATES, INC.

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received a letter from James M. Longshore, P.E., the president of B.P. Barber & Associates, Inc. with regard to the statement of Chief Taylor of the Eastern Band of Cherokee Indians. By direction of the chairman, the letter has been printed in the hearing record.]

[The letter follows:]

LETTER FROM JAMES M. LONGSHORE, P.E., PRESIDENT, B.P. BARBER & ASSOCIATES, INC.

JUNE 15, 1989.

Hon. ERNEST F. HOLLINGS,
Chairman, Appropriations Subcommittee on Commerce, Justice, State and Judiciary, S-146 Capitol Building, Washington, DC

DEAR SENATOR HOLLINGS: In early April Mr. Robert Whitaker, an engineer from our Spartanburg office, assisted Chief Jonathan L. Taylor, the Principal Chief of the Eastern Band of Cherokee Indians of North Carolina, in providing testimony that the Tribe presented to the House Appropriations Subcommittee on Commerce. Immediately subsequent to that hearing, the Tribe submitted its testimony to your Subcommittee in writing. We would like to follow-up on that submission and provide you with some additional information on the Tribe's needs.

In December of 1988, B.P. Barber & Associates, Inc. completed a comprehensive report entitled "Phase II Water Study Updates" for the Cherokee Tribe. This report was a thorough analysis of the existing central water treatment system on the reservation. Our findings were a significant cause for concern to the Tribe, and confirmed what tribal leaders and planners already expected, that the drinking water system is totally inadequate to meet current demands and the existing filtration system is inadequate to guarantee safe drinking water.

The existing system has a total design capacity of 1.4 million gallons per day (MGD) and the present peak daily demands are exceeding this capacity. During summer months—which are the most critical time of year to the reservation's economy because tourism is the key to that economy—the system occasionally runs out of water, resulting in businesses and homes having their water cut off. Over half of the present capacity of 1.4 MGD does not meet EPA filtration requirements. In addition to these significant problems, the reservation is experiencing significant growth and the water service area population is projected to increase 2.5 times over the next 10 to 20 years. The present system was built in the 1930's and still contains much asbestos cement piping. There have also been failures in meeting present water quality standards. In summary, the tribe desperately needs a new water system if they are going to grow and prosper economically. The Cherokee's are blessed with a location which attracts huge numbers of tourists that can lead to a healthy economy. With millions of tourists traveling through Cherokee annually, we understand that there are definite spin-off benefits to portions of South Carolina, as well as adjacent areas in Georgia and Tennessee.

We would like to lend our strong support to the request contained in the Cherokee testimony that your Subcommittee include $4.75 million as a Public Works Grant from the Economic Development Administration for the expansion and rehabilitation work needed on the Eastern Cherokee water plant. It is our understanding that the Tribe has literally exhausted all other sources of funding. They have approached EPA, and have been told that they only fund water treatment for sewage plants. They have also pursued funding from the Indian Health Service, the Bureau of Indian Affairs, the Farmers Home Administration and even HUD through the CDBG program, and in each case been told that the agency is unable to help them to the extent needed.

We hope you can help our neighbors, as there is no question that the water system upgrade is needed. Please do not hesitate to contact us if you have any questions or require any additional information. Thank you for your consideration of this problem in Cherokee, North Carolina.

Very truly yours,

James M. Longshore, P.E.
President.

USTTA FEES

With respect to tourism and travel, now, we are really going in the wrong direction. We support it. We have Governor Bryan and several others who have come in the Senate as solid supporters. It is a winner. We make money.

Now Commerce comes in with a $1 fee on the tickets for the incoming foreign and domestic passengers. You are a businessman. If you travel back and forth, you would not want to pay that $1 because you are not traveling for tourism. They are in international business, and one-third of the travelers are business travelers required to so do.

Yet even if we gave that fee, which I, frankly, oppose, you still cut the budget $700,000. What gives on that?

Secretary Mosbacher. Well, the budget is basically flat, and what we were trying to do with the travel and tourism, which I agree with you 100 percent, is extremely important and may be the best rate of return in Government, maybe one of the best anywhere, because we spend over $13 million and we get back over $26 billion, 2,000 to 1.

But we think that we can be an even better catalyst working with the States and primarily the private sector and just get more done for the same amount of money working with them. I have had a chance to meet with the advisory committee or advisory board. They were willing to go even further. We can be the catalyst, and move down to open the new Disneyland operation just because there are going to be over 300 foreign journalists there.

Senator Hollings. You need something.

Secretary MOSBACHER. I think we are spending time and effort and PR, I believe.

Senator HOLLINGS. But you cut that budget by $700,000. You are getting $21 million out of the fee and then you cut the budget $700,000 and also give $3.9 million, almost $4 million from that $13 million you put into Spain, in Seville, not in Disneyland.

Secretary MOSBACHER. Well, the amount that goes to the Seville Fair actually will be shared, and at this time still being, I think, discussed among the State Department and USIA.

Mr. BROWN. Yes; the State and USIA, and the private sector.

Secretary MOSBACHER. Yes; the private sector will actually, I think, end up paying most of that.

Senator RUDMAN. If the chairman would yield; Commerce's share of the funding of Seville coming out of USTTA is about $3.2 million. Is that a further reduction in their budget, do you think?

Secretary MOSBACHER. What we are talking about is having the private sector pay that.

Senator RUDMAN. That is not what the justification shows; at least that is the way I understand it.

Mr. BROWN. The justification shows that up to $3.2 million is the initial plan, but then none of that amount is settled.

Senator RUDMAN. If you follow that plan, that would then reduce the——

Mr. BROWN. Yes, sir.

Senator RUDMAN. The USTTA budget another $3 million. That is a 30-percent reduction. I guess my question is that if we have a $700,000 reduction, how would that be saved? Would you close some of the offices somewhere around the world?

Senator HOLLINGS. Particularly since you are using the money to go to Disneyland.

Senator RUDMAN. I guess that is my question. How would the $700,000 be saved? I guess a financial person could answer that.

Mr. BROWN. The $700,000 will come out of the cooperative campaigns, research, and the multilingual port receptionists.

Senator RUDMAN. Of course, those programs are the ones that we work on with the States. The State of New Hampshire, the State of Nevada, the State of Hawaii—they all come and the U.S. Government works with them. You know, I think we ought to be careful with such a tiny program.

Let me tell you, that is not going to happen. Be realistic. We flat funded this for years and last year were finally able to step it up. We are not going to cut it further; we are just not going to do it.

Senator HOLLINGS. Seville is really $15 million and $15 million; $15 million from the private sector and $15 million from the Government, of which $5 million is from you, $5 million from State, and $5 million from USIA. That is $15 million in Federal funds. You are spending more in Seville, Spain than for all of tourism.

This is ridiculous, on the same order as high definition television.

Senator RUDMAN. Was that the proposal that originally came out of Commerce?

Mr. KANE. It is the only proposal we have.

Senator HOLLINGS. It is the only proposal we have.

Senator RUDMAN. We understand that, but I dare say, just as you didn't request EDA and you will get it, you are not requesting this, and you will get it. It is the same thing.

Senator HOLLINGS. I would like to get some requests to help us, like on the high definition television.

Senator RUDMAN. I didn't mean to interrupt the chairman.

Senator HOLLINGS. That is just like the Japanese. Spain is kicking us out, right outside of Madrid. We have given them an $800 million facility, just given it to them, and we leave. Now we have got to put $30 million in U.S. money in there, and $15 million of that $30 million from the Government is bigger than your whole tourism budget.

Secretary MOSBACHER. Just the money that we spent, and we will do our best to make sure the private sector is expending the money on the Seville Fair. They are going to be expending that money, or the private sector wouldn't be interested in doing it.

It interests people; its stimulates people, the Europeans, primarily, to come to the United States. I think that is the reasoning that the private sector is willing to do it, the reason we are spending any money over there. It is a way to promote tourism.

Senator HOLLINGS. It is a way of getting along with Spain. You and I know it. The multinationals are getting the pressure on them, "Oh, yes, we can get it." That tail wags the dog, and they got more than your whole tourism budget because you have to cut it.

STATUS OF CENSUS AND NOAA NOMINATIONS

In any event, with respect to the decennial census, I meant to ask about why we don't have a director of the Census Bureau. We have $850 million additional in the Federal budget for the decennial. When are we going to get a director?

Secretary MOSBACHER. Very, very soon. We are running the final checks on him, and I would say that there will something announced in the next couple of weeks.

Senator RUDMAN. How about an administrator for NOAA? Same kind of question?

Senator HOLLINGS. Right.

Secretary MOSBACHER. An administrator for NOAA is even sooner, I believe.

Senator RUDMAN. Has a resolution been made on the two final candidates?

Secretary MOSBACHER. Yes; yes; we have got a woman and a man as two of the top people in NOAA that are going to be, I think, not only extremely good and capable in the area, but they will complement each other very well.

COASTAL ZONE MANAGEMENT

Senator HOLLINGS. And the coastal zone management. You just red line it under NOAA. We are supposed to, and most of the States do have the balance between economics and environmental development. Each State, to its own liking, like up in Alaska. I wouldn't have the threat of oil, they would. We really needed in coastal zone management an embellishment and an enhancement and an approved plan to take care of these kinds of oil spills up there.

Secretary MOSBACHER. In that coastal zone, we are building a sea grant aspect, and that, I think, complements it and goes with it.

Senator HOLLINGS. That is a different program. Yes; sea grant works with NOAA and you have no money for it either.

Secretary MOSBACHER. But it does help cleanup of the oceans and estuaries.

MARINE FISHING LICENSE

Senator HOLLINGS. Dr. Evans' group will be making all the studies and everything else up there. On the marine fishing license, the President opposed that in the campaign. Does he favor one now?

Secretary MOSBACHER. It is in the budget.

Senator HOLLINGS. I wish he would go about it the same way he did about taxes. Can't we read his lips on the fishing license? [Laughter.]

WEATHER SERVICE SHORTFALL

I did. The Weather Service doesn't have the amount in there to restore the weather stations that were to be eliminated. We have a $21 million shortfall in 1989. You restored those offices, but we haven't provided for them in the 1990 budget. How much is needed in the 1990 budget?

Secretary MOSBACHER. $35.8 million.

Senator HOLLINGS. The shortfall is $35 million?

Secretary MOSBACHER. Yes.

Senator HOLLINGS. How are we going to get that?

Secretary MOSBACHER. Well, we are going to postpone some of the additional NEXRAD facilities; we are going to reduce some polar satellite contingency costs. We will go to some low-priority initiatives. We will also review very carefully and in great depth the costs of maintaining the weather stations.

I pledge not to diminish weather forecasting in time or in capability in any station in any part of the country. But we will try to make it more cost effective. Then we, I believe, also have the right to move, within the total budget, the amounts around; is that correct?

Mr. BROWN. Yes; we will stay within the 1990 total but we will achieve $35.8 million from those items the Secretary just listed.

TAILORED CLOTHING TECHNOLOGY CORP.

Senator HOLLINGS. Before I close down, a couple of things on TC^2. That is the Tailored Clothing Technology Corp., down in Raleigh, NC. You talked about business and Government getting together. We get a veto message constantly from the administration about being more competitive.

So we put in this initiative, and one-half of it is by industry and the other one-half by the Government. They have independent research. They are computerized. They are electronically controlled and everything else like that in order to upgrade and increase productivity, but there is no funding for 1990.

Why do we eliminate that program when it has proven it works, TC².

Mr. BROWN. Yes; we have had 18.7 million dollars' worth of Government contributions since 1981.

Senator HOLLINGS. I am talking about next year, the 1990 budget.

Mr. BROWN. There is nothing in the 1990 budget.

Senator HOLLINGS. That is what I am talking about.

Mr. BROWN. The rationale is it should be supported directly by the private sector.

Senator HOLLINGS. Well, if we did all of that, we would do away with the Department of Commerce. Good rationale. We don't want the Government messing up in industry, so let's do away with the Department. Isn't that right? We don't have to take a census; we don't have a have a Trade Administration.

Senator RUDMAN. Give the Secretary at least 1 year before we try that, Mr. Chairman. [Laughter.]

Senator HOLLINGS. Mr. Secretary, Senator Rudman and I both appreciate your appearance today, and we appreciate what you are doing. On the NOAA hearing that we have tomorrow, you have eliminated $335,199,000 in 87 programs. Please have the Budget Office itemize them that so tomorrow we will have the itemization of the 87 programs and to what degree they are diminished or cut? We want a listing which displays how much NOAA requested in the 1990 submission and then how we cut it from the request now.

Excuse me. I yield to the Senator.

ANTITRUST LAWS

Senator RUDMAN. Just one last question. We have talked about this privately, this whole area of HDTV. One of your very distinguished predecessors, a man who was very much loved up here on the Hill, Mac Baldrige, really was on the verge of working with us on some modification of the antitrust laws. We have got people here in Congress that just don't want to change the antitrust laws at all, but I don't think they understand the international markets.

The laws are fine in terms of American companies, but what they essentially do is ignore the fact that we are competing internationally. I would hope that the Commerce Department would come forward again in conjunction with the Justice Department to give us some recommendations so that there would be ways for various American industries to work together in a legal way under agreements that could be approved in circumstances by courts that would allow us to compete like MITI does in Japan.

When do you think you might be able to work on that proposal in final form and get it up to us?

Secretary MOSBACHER. Senator, we have got a May 10 meeting with our committee. We have got interagency meetings, and we are in charge of that area for the administration. The President has asked me to lead that charge. I would say within 60 days we should have something for you very definitive. What we want to do is find out what industry needs to make them march forward on this.

Senator RUDMAN. Exactly.

Secretary MOSBACHER. And I think this is one of the aspects; that further work on standards.

Senator RUDMAN. The sooner the better, because until these companies can talk to each other without being afraid they are about to get indicted, we are going to have problems.

Secretary MOSBACHER. We have done some work on it, a lot of work. We worked with the Justice Department. We are going to be doing additional work with them.

Senator RUDMAN. Good, glad to hear that.

Secretary MOSBACHER. We will get back to you.

Senator HOLLINGS. Mr. Secretary, MITI is a modicum committee, in reality. The committee meets every Monday morning at 10 o'clock. The free press is not admitted. They sit down, and, of course, they set about rewarding savings. They have 50,000 go out every Monday like a postal savings knocking on doors. They allocate the financial resources to the ministry of finance which allocates it to the industry on a designated basis. We have antitrust, they have protrust, and they do take our technology.

They do develop a quality product. Then they take it and target the foreign markets, subsidize it and do not allow any competition to their particular promotion of it. Now, we can't do that, they can. At the end of the war, they were decimated. Their population accepted the fact that a Toyota, for example, that sells here for $13,000 in Washington, DC, still sells for $17,000 in Tokyo.

We can't emulate them in every respect. The Diet, by the way is not a Congress or a parliament. The Diet just rubber stamps what the committee proposes. Now it has been emulated. The gentleman is in town from Korea today. I have had to cancel the appointment, because after we finish, Senator Rudman and I will be tied up with the budget all day long. They have done it up in Taiwan, and it works, and thank gosh, they have done it in Indonesia, the fifth largest country in the world.

So the Marshall plan has worked. They are all capitalistic, but it is not all of that free market. It is market trade. We have got to realize that in looking at that, we can't do it; we don't want to do it, but in your development of competition, realize what the competition is.

They will move on you, and I don't blame them. Those business fellows are quick and sharp, and they are opposed to you. They have been setting the policy in here with the Washington lobbyists. The tail has been wagging the dog, and the politicians are way behind the curve up here. If we pass a bill, we will get it vetoed before we can get it over there. You are in the briar patch now.

LETTER FROM AIR-CONDITIONING & REFRIGERATION INSTITUTE

One last thing for the record is a letter received from the Air-Conditioning & Refrigeration Institute with regard to the budget of the National Institute of Standards and Technology.

[The letter follows:]

LETTER FROM ARNOLD W. BRASWELL, PRESIDENT, AIR-CONDITIONING & REFRIGERATION INSTITUTE

APRIL 11, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate, S-146A Capitol Building, Washington, DC

DEAR MR. CHAIRMAN: The Air-Conditioning and Refrigeration Institute (ARI) is a national trade association representing manufacturers of over 90 percent of the U.S. made central air conditioning and refrigeration systems. ARI wishes to present its comments on the Fiscal 1990 Budget for the National Institute of Standards and Technology (NIST). We ask that these comments be included in the subcommittee's hearing record on the NIST budget.

There are many challenges presented to our members and to the public by the reduction and possible future phase-out of chloroflourocarbon (CFC) refrigerants. These refrigerants are used in a large portion, though not the majority, of the units manufactured by members of ARI. Our members do not include household refrigerator or automotive air-conditioning manufacturers.

Our industry endorses global measures to reduce as rapidly as possible the use of substances which damage the earth's ozone shield. ARI called for international agreement on such measures well before the signing of the Montreal Protocol. We agree with the need to reexamine the current reduction schedule in light of the latest available evidence. If the evidence convinces the scientific community and world leaders that accelerated phase-out is necessary, our industry will support that. We have no desire to continue using CFC's if we can find alternatives, and we are working hard now to find them. The National Institute of Standards and Technology (NIST) can play an important role in research on alternative refrigerants.

But in this search for new refrigerants, we must also consider the world need for efficient refrigeration and air conditioning systems—and the realities, especially the time requirements, of developing new equipment and converting the huge world inventory of existing equipment to new refrigerants. The task is enormous. We must proceed expeditiously but prudently. This equipment is used widely to preserve food, to keep our large buildings habitable and to support many industrial operations. Premature phase-out of refrigerant production, before all equipment is modified or replaced, would cause serious economic and societal damage.

Products of our member companies using CFC refrigerants include the following:

Centrifugal chiller machines for air-conditioning large buildings, produced in the U.S. at a rate between 3,000 and 4,000 per year, with about 80,000 to 90,000 installed nationwide. These units last for 25 years or more.

Refrigeration equipment used in supermarkets, restaurants, trucks, railcars and other industrial or commercial applications. An unknown number of units using CFC refrigerants, probably over 4 million, are installed nationwide. These units will last for 15 years or more. With replacement of worn components, such as compressors and motors, they will last much longer.

Electric drinking water coolers, with perhaps 6 to 8 million installed.

Automatic ice-makers used in hotels, restaurants and other establishments, with probably over 3 million installed.

We believe that the above products account for about 10 to 15 percent of the total U.S. CFC consumption, a small percentage.

In referring to CFC's I do not include the hydro-chloroflourocarbons, or "HCFC" compounds, which have very little effect on the ozone layer and are not planned for reduction. HCFC-22 is one of these, and it is the most widely used refrigerant in air conditioning systems. It is used in virtually all residential air conditioning, both central and room units, and a good portion of commercial systems. It is a potential alternative to CFC refrigerants in some applications, but this will require new or modified equipment. It is therefore part of the solution to the ozone depletion problem. For that reason it would be a mistake to begin considering possible restrictions now on this useful compound. That would be most counter-productive.

But HCFC-22 is not an efficient or economical alternative for some other major applications. Therefore, it would be a mistake also to base CFC reduction plans on the assumption that this alternative is readily available for virtually all uses. It is not.

The task of converting to alternative refrigerants is daunting. There are problems which have not been resolved with all potential alternatives currently being studied. Some are not efficient. Some are not chemically compatible with lubricants or other materials in current equipment. Some are flammable. Toxicity questions are not completely resolved for the new refrigerants and full toxicity tests will take years to complete. Few of the several new candidate refrigerants have been available for testing by manufacturers until recently, and there are some new candidates still not available in adequate quantities. There is growing belief that a sizable group of new refrigerants, including mixtures, will be needed, but we don't yet know which will emerge as the choices. We must test them all carefully and choose wisely, for reasons of safety, equipment durability, energy efficiency and—last but not least—global competitiveness.

Manufacturers cannot develop equipment for new refrigerants until the above questions are resolved. It will then take time to design and test preproduction models. Then comes the process of retooling for production, which of course cannot begin until there is an assured supply of the new refrigerants in adequate quantities. Even if everything clicks we cannot expect equipment with new refrigerants to begin production before 1993 or 1994. It could be later. And there will have to be a period of transition for a few years beyond that. So we must expect to see some equipment with CFC's still being produced in the latter half of the 1990's.

As far as new equipment is concerned, most in our industry believe that we will find alternative refrigerants and that we can phase out CFC's entirely in new products by the end of the century. That is our current expectation, though we don't yet have all the answers we need to describe how it will be done.

The most troublesome problem is the need for continued servicing of the large inventory of installed equipment with CFC refrigerants. We don't have the capacity to replace all of that equipment in a few years. We may or may not have the capacity to modify it sufficiently to accommodate substitute refrigerants. The modifications could be extensive—maybe prohibitive—for much of the equipment. We just don't know yet and it will be a few years before we do know what will be needed. We think its likely that CFC's in small quantities will continue to be needed for servicing installed equipment beyond the year 2000. Research and testing during the next 2 or 3 years will help us predict more accurately what can be done or cannot be done to phase out CFC's in installed equipment.

Manufacturers have been collecting data and conducting research on alternatives to the best of their ability in the last 2 years. Substantial funds are being spent this year, and these will be increased as testing and development accelerate.

Under normal circumstances our industry could do the necessary research and testing without any assistance, with equipment manufacturers and refrigerant producers working together. But there is too much to be done in a short time, to test and prove all the candidate refrigerants, select the most suitable and efficient ones for various applications, design and test new equipment, and retool for production. The process takes time—and money.

ARI has recently initiated an association research program and developed a research plan. The most immediate objective—though not the only one of the plan—is research on alternative refrigerants. The plan defines those tasks best performed by industry and those which could be done by government. And it lays out time schedules. While the majority of the necessary work to effect a transition to new CFC refrigerants must be performed by industry, government research can play a critical role in the initial stages, thereby helping to speed up the transition.

We have discussed our plan with DOE, EPA and NIST. They are working informally with us to refine it.

NIST has a crucial role. First, its National Engineering Laboratory's Center for Chemical Engineering has the needed expertise and the facilities to measure precisely all of the thermo-physical properties of the new refrigerants. This work must be done thoroughly and done early to permit the initial selection of appropriate refrigerants and the design of prototype equipment for testing. At the urgent request of our association NIST has recently agreed to accelerate its research on refrigerant properties this year if funds can be made available. This refrigerant research needs to be continued also through 1990 at the fastest possible rate. We need this data; in fact we could use it right now.

NIST also has plans to establish a national data repository on new refrigerants in the Office of Standard Reference Data, in its National Measurement Laboratory. We have asked NIST to expand and accelerate this data bank or repository to include much additional information pertaining to new refrigerants. For example we would like it to include the results of any known research on compatibility of new refrigerants with lubricants or other materials used in refrigeration equipment.

Chemical blends or mixtures of environmentally safe refrigerants expand the number of possible alternatives and offer the potential for "tailoring" the properties of refrigerants to meet design constraints and efficiency objectives. Simulation models and breadboard refrigeration systems in the National Engineering Laboratory's Center for Building Technology should be used to explore the potential usefulness of these refrigerant mixtures.

At ARI request, most of the major companies in our industry have already agreed to share much of their current and future research information on new refrigerants. They will do this by providing the information and data to the NIST repository where it can be filed with similar data from other sources and then made available on request to anyone who requires it. This will help to reduce duplication of important research and enable the industry and the government to use our research resources more efficiently. And industry, through ARI, will work closely with government agencies to help plan and coordinate industry and government research activities. Beyond that, industry will devote its efforts to developing new products using alternative refrigerants and to converting production facilities when the time comes.

We also believe that NIST can provide unique resources through its Institute for Materials Science and Engineering. That group can act as the government focal point for coordinating and funding government research which we believe should be conducted to help resolve questions of chemical compatibility between new refrigerants and the materials used in refrigeration systems, including lubricants. Additionally the Institute can develop a standardized test methodology for materials testing with industry guidance to insure that all test results are usable. There is much work to be done in this area before decisions can be made on alternative refrigerants. NIST is the best qualified agency to manage this research, much of which will have to be done in private laboratories under contract.

Because of the importance of this environmental issue, and the urgency of finding solutions as soon as possible, NIST should be provided with adequate funds to do the work that is needed. It's too important a matter to do otherwise. EPA and DOE, other agencies involved in this research activity, should also be funded adequately to assist in research on new technology.

We were surprised to learn that the very small funds previously planned for NIST refrigerant research—about one quarter of a million dollars—have been deleted from the proposed 1990 budget. That's a serious omission. Not only should those funds be restored but they should be significantly increased, so that NIST can conduct in-house work and also fund the contract research that is needed.

As a minimum ARI currently estimates that NIST should be appropriated $3 million a year for the next 3 years. After all the research needs are clearly identified even more funds mad be required. Even if increased, the funds would not be large in comparison with other research programs. Given the nature of the environmental matter we face and the urgency of finding solutions, the Congress would be wise to ask NIST what they could effectively use and then authorize that or more.

The Congress should also look closely at research funds related to this effort in the other departments and make sure they are adequate. Our industry, through ARI, will work closely with these government agencies to help them plan research programs which are coordinated with industry research.

We must keep in mind the vast inventory of installed equipment which will continue to need servicing with either new or recycled CFC refrigerants until replaced. Many years will be required to replace all of it. Some in the industry believe we may find substitute refrigerants suitable as "drop-ins" for some of these units. We don't have proven drop-ins yet, and we may not ever have them for some of this installed equipment. It is likely that small quantities of CFC's will continue to be needed beyond the year 2000 to keep installed equipment operating.

Industry is working hard and will be heavily engaged for the next few years in finding refrigerants for new equipment and getting that equipment into production. Refrigerants being developed for new equipment designs will not necessarily work in current equipment. Government research is needed to expedite the search for substitute refrigerants for the installed inventory. We believe that DOE should significantly expand its limited refrigerant research program to meet this need. The objective should be to identify and then test promising substitute refrigerants, including new blends, in currently installed equipment. This testing could be done in U.S. government facilities. NIST can assist by identifying the refrigerants to test, based on measurements and analysis.

Funding required for such an expanded program would probably not exceed $10 to $12 million a year for 2 or 3 years. It is clearly in the public interest to find ways of reducing the dependence of equipment operators on CFC refrigerants while keeping this essential machinery operating until it is eventually replaced.

Summing up, Mr. Chairman, the makers of commercial refrigeration and central air-conditioning equipment are working hard to find new refrigerants. The chemical producers are working closely with them. It's a big task and will take time. We don't have the answers yet. We must not give up our hard-won gains in efficiency, so we have to look at every possible alternative. We need time—the nation needs time—to make this conversion. We also need understanding. And the government has a role to play in research.

I thank you for the opportunity to discuss this important subject.

Sincerely,

ARNOLD W. BRASWELL,
President.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We have additional questions on behalf of myself and for several other members of the subcommittee that we will submit to you for response in the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Top Level Positions

QUESTION:

Mr. Secretary, we are now one day short of the anniversary of the third month of the Bush Administration. The Senate has confirmed your nomination and yesterday the Commerce Committee favorably reported Wendell Willkie's nomination to be General Counsel. We have also received the nomination of Mr. Collamore to be Assistant Secretary for Administration, Susan Schwab to be Director General of the United States Foreign and Commercial Service, and Michael Darby to be Under Secretary for Economic Affairs.

The White House has announced the intention to nominate several others, particularly in the Trade area. What is holding up the submission of these nominations?

ANSWER:

The nominations are going through the usual FBI and conflict process at the White House. If it appears slower than usual, it is because of the close examinations of every appointee's post. without regard to the relative sensitivities of different

QUESTION:

The largest increase in the Commerce Budget, and proportionally in the whole federal budget is an additional $850,000,000 for the Decennial Census. The Director's position is vacant. How long will it be until we get someone on-board for that vital endeavor?

ANSWER:

A decision has been made on the Director's position and is currently in clearance. Hopefully, an announcement will be made in the next few weeks.

QUESTION:

What about the Assistant Secretary for Economic Development? Will there be a change in that position?

ANSWER:

A decision has been made on a new appointment and is in the same process as well.

Technology Issues

QUESTION:

The President has not yet announced whom he intends to appoint as Deputy Secretary, Under Secretary for Technology, and Director of NIST. When do you expect appointments for these three important posts to be made? And what specific duties will you assign to each of these three individuals? In particular, will your Deputy

Secretary play a major role in formulating the Department's technology policies?

ANSWER:

A decision has been made on the Deputy Secretary and the nomination should be announced shortly. A decision on the Under Secretary for Technology is imminent, and we have narrowed the NIST Director's search to a final field of candidates. While we are in the process of defining the evolution of the individual roles in the new Technology cluster the putative designee as Deputy Secretary will play a major role in defining the Department's technology policies, and brings a wealth of experience to that task.

International Cultural and Trade Center Commission

QUESTION:

During our hearing with the United States Information Agency, we found that as a member of the International Cultural and Trade Center Commission, USIA was making payments to the Commission for the design of an International Cultural and Trade Center. We find that the Department of Commerce is also a member of this Commission.

Is the Department making payments to the Commission? If so, how much has been paid and from what appropriation? When were these funds budgeted or reprogrammed for this purpose?

ANSWER:

The Secretary of Commerce is a permanent member of the Commission under the Federal Triangle Development Act, P.L.. 100-113. As authorized in the Act, the Secretary pledged in May of 1988 to transfer $100,000 to the Commission in FY 1988 and $150,000 in FY 1989. The transfers are made from the Salaries and Expenses account in General Administration, but are reimbursed by other Commerce bureaus.

QUESTION:

How much is budgeted for payment to the Commission in 1990 and where in the budget?

ANSWER:

There is no payment budgeted in FY 1990 since the Secretary's agreement was for FY 1988 and FY 1989 only.

QUESTION:

USIA testified that they had an interest in moving into this building. What is the Department's interest in this building?

ANSWER:

The Department of Commerce has three major interests in the construction of the International Cultural and Trade Center. First, we are working to have included in the construction plans a pedestrian tunnel connecting the Herbert C. Hoover Building and the new International Cultural and Trade Center. With the anticipated increased traffic on 14th Street, we view the tunnel as an essential safety precaution that will allow Commerce employees access to the new Center, the Metro station and parking without crossing that busy street. Moreover, the interaction between the ICTC and Commerce Agencies envisioned in the legislation will be greatly enhanced by this tunnel.

The Department also has requested that 350 parking spaces in the Center be designated for Commerce employees. With the construction of the building, the Department will lose over 430 parking spaces it now has for its employees in the Great Plaza.

Finally, the Department plans to occupy up to 20,000 square feet in the building for "store fronts" to provide to the trading community export licenses, trade books, international economic data, patent information services, etc. These "store fronts" are an integral part of the project's "one stop trade center" concept.

Decennial Census

QUESTION:

Mr. Secretary, in your statement you say the Department of Commerce is "right on target" with the $2.6 billion overall cost estimate for the 1990 Census. The General Accounting Office has been looking into that estimate as the additional $1.3 billion request for 1990 means we will have appropriated $1,990,000,000 of that total. They are concerned that since the estimate was originally made in 1986 there have been major adjustments such as federal employee pay increases and an increase in the Government's mileage allowance. For instance, they found that the Bureau has to significantly increase the pay rates to attract sufficient staff for the prelist operation.

Has the Department taken a fresh look at the $2.6 billion estimate, and if so, do you still stand by it?

ANSWER:

Since 1986, $2.6 billion has been the total for the full-cycle costs of the 1990 census. The major features of the program including the timing, size, and number of activities, have not changed significantly from the 1986 design. Instead, we have made specific design decisions within that overall framework; monitored and refined cost estimates on an on-going basis; and fine tuned staffing, equipment, space, and schedules to stay within the total of $2.6 billion. We believe that this total will be sufficient to take a good census.

QUESTION:

I understand that the Census estimate was based on an enumerator rate of $5.50 per hour, about the same as McDonald's pays. Do you really think you can staff the Census at that rate? What happens if you can't?

ANSWER:

We believe that in many areas we can attract sufficient staff for $5.50 an hour. For selected areas, the President's budget already includes a basic rate of $6 an hour, and allows for a 2% cost of living increase. As described in other answers to other questions, we have a number of efforts to help us identify and recruit the temporary staff we need. We believe our pay structure, including the use of supplemental and bonus pay, will be sufficient to our efforts or pay rates to meet these challenges. The precise response will depend on the nature, extent, and timing of the problem.

QUESTION:

Do I understand that the cost of the Census includes $80,000,000 for unemployment benefits. Since anybody working on the Census knows it is only temporary work, why is there funding for unemployment?

ANSWER:

The 1990 budget includes $71 million for unemployment compensation for former federal employees (UCFE).

Federal employees are eligible for unemployment benefits under the same conditions as those who work in the private sector. Each State establishes its unemployment eligibility rules. These rules specify how long a person must work to be eligible and certain reasons for leaving a job that would disqualify a person, such as being fired for cause or voluntarily quitting. If a person has worked a sufficient number of weeks, and left a job for a nondisqualifying reason, that person is eligible for benefits—regardless of whether the job (or jobs) a person worked was "temporary" or "permanent." This is true for seasonal recreation workers, Christmas sales clerks, IRS keyers, and census enumerators.

QUESTION:

The Bureau estimates that the full cycle cost of the 1990 Decennial Census will be $2.6 billion. Since that estimate was originally made in 1986, the Bureau has had to make budget adjustments to accommodate such items as pay increases for federal employees and increases in the federal government's mileage rate allowance.

Please provide us with a list of major Decennial Census activities that have been delayed, curtailed, or eliminated as a result of budget adjustments.

Please provide us with a list, that puts in order of priority, those Decennial Census activities and costs to be delayed, curtailed or eliminated in the event of budgetary short-falls in 1990.

What would it cost in current dollars to do the Census as designed in 1986? How has the design of the Census, with regard to the timing, size, and number of census activities changed since 1986? Which activities have been added? To what extent has the current Census design been affected by budget adjustments for inflation and real budget cuts since 1986?

ANSWER:

No major decennial census activities have been delayed, curtailed, or eliminated as a result of budget adjustments.

In the event of budgetary short-falls in 1990, the precise actions we take will depend on the nature, magnitude, and timing of the problem. Since the legal mandates for the census requires us to provide reapportionment data by December 31, 1990 and redistricting data by April 1, 1991, we would endeavor to preserve schedules and resources needed to meet these requirements. Thus, activities not directly related to these efforts would be those most likely to be affected. These would include activities related to assuring the quality of the population and housing characteristics data; delaying or reducing sample data; research into the accuracy of the census results; and promoting the importance of the census.

In 1986, the Administration developed estimates for the 1990 census full-cycle costs. In 1987, we presented those to the Congress as part of the 1988 Budget. The 1990 request is consistent with that $2.6 billion estimate and with the overall design features associated with that estimate.

We have absorbed most cost increases, including mileage reimbursement rates for our large field staff, portions of required pay raises, and other inflation cost adjustments since then. In addition, the Congress cut $71 million from the decennial funding in the last two years.

Since we submitted the 1990 request to the Congress, we have identified $40-50 million in additional costs for a field enumerator pay raise and for District Office space rental. Again our plan is to absorb these costs within our funded level. This will be possible because we have realized savings in 1989 in our large questionnaire printing contracts and other processing efficiencies.

Thus, since 1986, $2.6 billion has been the total for the full cycle costs of the 1990 Census. The major features of the program, including the timing, size and number of activities, have not changed significantly from that design. Instead, we have made specific design decisions within the overall framework; monitored and refined cost estimates on an on-going basis; and fine-tuned staffing, equipment, space, and schedules to stay within our overall control total of $2.6 billion.

QUESTION:

The Bureau has been denied funding for a contingency reserve it believes it needs to meet unanticipated budget shortfalls in 1990 without having to shutdown operations as it had to do in 1980 while awaiting action on a supplemental budget request.

How does the Bureau plan to handle unanticipated budget shortfalls in 1990 without a contingency reserve? How will the Bureau ensure that census operations are not interrupted in 1990 by an unanticipated budget shortfall?

ANSWER:

We believe that the early testing, careful planning, and advanced Management Information Systems we are using for the 1990 census significantly reduce the likelihood of unanticipated budget shortfalls in 1990. Some factors, however, remain beyond our control. Should they vary from the assumptions underlying the budget, we may have to take action to control the budget impact.

As mentioned in the previous answer, the precise actions we take will depend on the nature, magnitude,and timing of the problem. Thus, in a more general sense, contingency planning involves having the ability to rapidly and accurately collect information on the status of critical activities and problems, and having an effective decision-making process.

Our automated Management Information System (MIS) will be the tool to provide up-to-date cost and progress data so that we can monitor key activities. We also believe our current decision-making process (involving key headquarters staff, executive staff review at the Census Bureau, and departmental and budgetary reviews) can use MIS data and other information to make quick accurate decisions if changes are needed. The kinds of things that would be considered are the same as mentioned in the answer to the question above - that is, we would not change things that affect the basic counts or our ability to meet legal mandates.

Contingency planning also encompasses the ability to anticipate potential problems and then take steps to prevent or minimize the chances the problem will occur. This is why we conduct our various pretests and dress rehearsals, for example. In other words, factors are beyond our control only to the extent that we have not recognized uncertainties and taken steps to reduce our risks. Thus, for example, the mail response rate is not entirely out of our control since we have taken a number of steps to achieve or even exceed the estimated rate. These include a wide range of publicity and outreach efforts to encourage participation; a motivational message included with each questionnaire; toll-free telephone assistance numbers; and the like.

QUESTION:

In the 1980 Census, the Census Bureau used a number of programs for improving coverage. The programs were generally considered as procedural improvements by the Bureau and were used during or just before census-taking began. Some of the programs were used to identify persons or housing units which could have been missed by the general census procedures.

How do the expected costs and benefits of each of the Bureau's coverage improvement programs for 1990 compare to the costs and benefits of its coverage improvement programs for 1980?

In addition to its coverage improvement programs, the Bureau adopted other program improvements for the 1980 Census. These included improvements in: data collection, geography, and data processing/tabulation.

What improvements to its major Census programs is the Bureau adopting for the 1990 Census? How much will they cost? What benefit(s) does the Bureau expect to derive from these improvements? How do the expected costs and benefits of these improvements compare with the 1980 Census?

ANSWER:

Overall, we spent about 10% of the 1980 census costs on coverage improvement programs, and expect to spend at least the same proportion for 1990. Some of the major coverage improvement operations for which costs can easily be isolated are as follows (note that costs are for all fiscal years, although the majority of them are in FY 90):

o Postal Checks - The USPS will review our mailout address lists twice for completeness and accuracy. We are in the midst of the first review now, and the second review will be done about one month prior to delivery of the questionnaires. These reviews consistently have proven to be cost-effective, and we expect this to be the case again for 1990. We will spend approximately $30 million dollars to prepare for, conduct, and process these postal checks.

o Precanvass - For urban areas where we purchase our address list from a commercial vendor, followed by a USPS review of the completeness/accuracy of the list, will have our enumerators do a dependent recanvass of the list this spring. The purpose of this is to add any new or missing units and to make sure addresses (including apartment numbers in mult-unit structures) are up-to-date and accurate. This operation was done only on a structure basis in 1980, but now will be done a unit-by-unit basis so that our list is more precise and better able to help non-response follow-up enumerators determine which units have not yet been enumerated. We will spend approximately $26 million on preparations, fieldwork, processing, and related geographic work for this operation.

- Vacant/Delete Check - During nonresponse follow-up, past tests and censuses have shown that enumerators misclassify some occupied units as either vacant or to be deleted. Thus, as in 1980, we will recheck the occupancy status of each such case to ensure that the status is correct and enumerate any occupants who otherwise would be missed. In 1980, this was one of the better coverage improvement operations with regard to reducing differential undercoverage by race. We will spend about $64 million on preparations, fieldwork, and processing for this operation. The estimate we provided to the House of $39 million was an error.

- Local Review - Prior to the census, and near the end of fieldwork for the census, we will send housing counts by block for review by local officials in the 39,000 functioning governmental units in the country. This will give them the opportunity to alert us to any potential coverage problems in time to recheck problem blocks. We will spend about $11 million on preparation, map production, fieldwork, and processing for this operation.

- Outreach/Publicity - One of the major goals of our extensive outreach and publicity program for 1990 will be to encourage participation in the census so as to improve coverage. These activities have been expanded greatly compared to 1980, and we believe they will be particularly helpful in addressing potential differential undercoverage of minorities and in areas where we had such problems in 1980. Our contracts with the Ad Council include minority advertising firms that will develop materials targeted to particular hard to enumerate populations. We will spend about $73 million on these programs for the 1990 census.

Beyond some of these major programs, it is difficult to isolate costs for all activities that we believe will help improve coverage for the 1990 census. For example, we believe the increased use of automation will increase control, consistency, timeliness, and quality of both coverage and content in ways such as:

- better maps and consistency with other geographic reference materials (as a result of TIGER)

- more timely monitoring of schedules, costs, and progress (as a result of an automated Management Information System); and

- automating questionnaire check-in; production of non response listings; unit-level tracking of each questionnaire throughout all field and processing operations (as a result of the automated address control file system).

We also believe other changes since 1980 will improve the accuracy of our address lists, the accuracy with which questionnaires are delivered, and thus our ability to more accurately determine which units and persons have or have not been enumerated. These include improvements in scheduling and workflows; tailoring methods of enumeration to unique situations (for example, the use of Update/Leave in areas where we have difficulty developing address lists that can be used by USPS for accurate delivery); and removing large paper-handling office operations (such as check-in and edit) from DOs in more difficult to enumerate areas so that the DO staff can concentrate efforts on follow-up and other data collection work.

The overall design, workflows, schedules, and use of automation for 1990 are quite different than in 1980, so it is difficult to make detailed comparisons of costs and benefits between the censuses. The above changes are the major new or refined efforts we are making for 1990 and largely account for the increased costs since 1980. We are confident that the benefits of improved coverage in the 1990 census, compared to a 1990 census without these programs, justify the costs.

QUESTION:

The Bureau added about $21 million (Cen-157) to its FY 1990 Budget to cover increased pay rates for its 1990 field staff.

How much more may be needed for competitive pay and where will it come from?

ANSWER:

We estimate that an additional $39 million is needed. We plan to fund this through FY 89 savings realized from the questionnaire printing contracts and processing efficiencies.

QUESTION:

The Bureau has spent about $5 million for FY 1984-88 and plans to spend an additional $11 million for FY 1989-93 on its Management Information System (MIS). The Bureau plans to use the MIS to provide timely monitoring of schedules, costs, and progress during the 1990 Census.

Does the Bureau have a backup or parallel system in the event that the MIS does not perform as expected?

ANSWER:

The Director's MIS at headquarters uses data from other automated cost and progress systems such as the field payroll system. Thus, these other systems could be used in the event the MIS does not perform as expected. Furthermore, these other systems are based on various paper records such as daily production records kept by field crew leaders. If necessary, hand tallies could be produced from these records to help us monitor costs and progress.

QUESTION:

The Bureau plans to conduct a Post Enumeration Survey (PES) of 150,000 households in 1990 to compare independent interviews to Census records. The persons listed in the survey are to be matched with the Census listings to estimate the number of persons missed in the Census and persons incorrectly counted.

How much does the Bureau estimate it will cost to complete its planned 1990 Post Enumeration Survey (PES)? How much additional cost would be needed to expand the survey size from the planned 150,000 households to 300,000 households?

Specifically what purposes will be served by completing the PES considering that the Administration has decided not to adjust the counts?

ANSWER:

We have designed a national sample of 150,000 households for the 1990 PES, at an estimated cost of $30 million for the program. An expanded PES of 300,000 would cost approximately another $30 million. We continue to examine final PES results from our dress rehearsal in order to refine timing and cost estimates for this program.

The PES will be used as part of our coverage evaluation program for the 1990 census. We have conducted such programs since 1950, and believe they provide valuable information on the sources and types of coverage errors that can be used in planning the next census. Such information also is valuable to the many users of census results in understanding the errors and limitations of the data, and for improving techniques to evaluate coverage in future censuses.

QUESTION:

We understand that the Bureau is reviewing its pay structure for 1990.

How, specifically, is the Bureau undertaking this review; what are the steps it is going through and what information is it using to make its decision? When does it plan on completing its review and making a final decision about its wage rates for 1990?

ANSWER:

We developed database of socioeconomic indicators for 1,700 counties that includes information on unemployment rates and average income, and information on each of the DOs such as pay indices and administrative costs (mileage, space communications costs, and so forth). From this we developed a model to analyze competitive pay needs by district office. The Department has completed its review and will forward it shortly to OMB for concurrence.

QUESTION:

We understand that the Bureau plans to offer some of its temporary employees the opportunity to earn extra pay through two different supplemental pay programs--a training supplement and incentive pay. The training supplement provides a bonus to enumerators who complete training and successfully enumerate a certain number of cases. This bonus essentially redistributes basic pay--it makes up the difference between the minimum wage the enumerator received during training and the basic pay rate. The incentive pay program would provide an additional bonus to enumerators who continue to work for a certain period and maintain a specific production level.

In what geographic areas and for what positions will this second type of payment be offered?

How much does the Bureau estimate that it will spend on this second type of payment in 1990?

ANSWER:

Enumerators, crew leaders, and field operations supervisors in all areas are eligible for production bonuses ("incentive pay").

We continue to examine the overall structure and levels of pay for FY 1990 (including the use of differential pay for different areas), and expect to make final decisions this spring. Both supplemental pay and production bonus pay are designed so that their costs are offset by the savings from lower turnover rates and increased productivity.

QUESTION:

The Bureau has stated that it was able to attract sufficient staff after it significantly increased pay rates during prelist.

How much did the pay increase cost over and above what had been expected and what effects, if any, did the pay increases have on staff productivity and quality?

ANSWER:

We were able to attract sufficient staff for the prelist in most areas by paying the established rate of $5.50 an hour. However, we were not able to recruit enough people in areas on the East and West Coasts - particularly in the Northeast and Mid-Atlantic states. We conducted a test in four areas (Northern Virginia, Maryland, New Jersey, and Connecticut) using a rate of $8 an hour. The selection of this rate was based on the need to ensure that the increase would be significant enough to yield measurable results for the test. Once the increase was publicized, recruiting levels doubled in Connecticut and increased by 80% in Northern Virginia (these were the only two areas we could fully analyze). With the higher pay rates, productivity was 20-25% higher than for those persons in adjacent areas who received the $5.50 rate.

QUESTION:

We understand that during prelist several of the Bureau's Regional Census Centers expressed concern about the adequacy of the recruitment budget for paid advertising.

How much is the Bureau planning to spend on such advertising in 1989 and 1990 and how does the Bureau know that this amount will be sufficient to attract needed staff?

ANSWER:

Paid advertising is not a significant component of our recruiting efforts for the 1990 census. Instead, our program involves working directly with a wide range of organizations including:

- national and local private-sector organizations, including minority organizations (NAACP, National Conference of American Indians, U.S. Hispanic Chamber of Commerce, and so on); community group networks; civic groups; and religious groups.
- national and local public-sector agencies and organizations, including the networks of the Census Community Awareness Program; state data centers; Complete Count committees; and other state, local, and federal government units.
- in areas where we experience recruiting problems, other efforts will include mailing post cards to households in the area to advertise the availability of census jobs, use of part-time assignments, and other similar techniques.

There will be media efforts, including both news reports and feature coverage; public service announcements sponsored by the Advertising Council; and Census Bureau press releases. For the most part, these publicity efforts will serve to increase public awareness of the census, but they often will also be used to publicize the availability of census jobs. Thus it is difficult to separate out costs for the recruiting aspects of these efforts. In any case, many of these efforts do not involve paid advertising per se. In addition, we do have approximately $5 million in the budget specifically for district office recruiting advertising.

QUESTION:

The Bureau experienced a number of payroll administration problems during the dress rehearsal and early Decennial Operations. We understand that in some cases, late or inaccurate pay checks led to employee turnover.

What efforts has the Bureau undertaken to make improvements to ensure that it will be able to successfully administer a payroll system for the hundreds of thousands of temporary employees it will hire in 1990?

ANSWER:

We have simplified the payroll process to make it easier for the temporary staff to administer. Problems experienced during earlier operations have resulted in additional computerized, as well as manual, payroll edits and controls. A manual has been written to cover the detailed processing steps necessary for the district office clerks. All district office and regional management will receive improved procedures and additional training.

QUESTION:

We understand that the Bureau has begun to recruit for Precanvass activities.

While it is still early, what areas, if any, are experiencing problems meeting their recruitment goals and what is the Bureau doing to address these problems?

ANSWER:

Early reports indicate recruiting shortages in selected areas in the Northeast, South, Central Plains, and Far West. Those District Offices which just opened within the past two or three weeks have not progressed to the level of offices that opened earlier.

Where shortfalls appear, additional efforts are undertaken in the form of contacts with State employment services, classified ad placements, visits with organizations and public officials, and so forth. As a last resort, we would consider raising pay rates in limited number of selected areas.

QUESTION:

It is our understanding that the Bureau believes that based on its experiences during the 1980 Census, particularly in the rural South and Appalachia, that it has difficulty in developing mailing addresses in areas without city type addresses. The Bureau plans to develop a Precensus address list for these areas; however, these addresses will not undergo any postal service address checks. The Bureau will have census enumerators, rather than postal service employees deliver questionnaires in these areas.

It is our understanding that this delivery method (update/leave) is more costly than the postal service delivery. However, it is also our understanding that the Bureau believes the costs of using update/leave are outweighed by the benefits of improved mail response rates.

How is the Bureau assuring itself that it has accurately identified those areas that will have deliverability problems in 1990? Wouldn't a postal service address check for these areas provide more definitive information on areas with deliverability problems?

Is it reasonable to assume that the same areas that experienced problems in 1980 will experience similar problems in 1990? If so, Why?

Did using update/leave in the dress rehearsal improve mail response rates? If so, by how much? What are the Bureau's estimates for savings that result from increase in mail response rates?

What is the per unit cost of update/leave versus mail out delivery? (In effect what are the Bureau's per unit cost for the postal service address check and the related reconciliation, and postage for mail out compared to the per unit cost of update/leave?)

ANSWER:

We identified counties with largely rural-style addresses (as opposed to street name/house number) similar to areas where we have had deliverability problems in the past. Entire counties were selected for Update/Leave (U/L) so as to minimize complexities for USPS delivery in adjacent mail-out areas. Within many of these counties, however, mail-out/mail-back (MO/MB) delivery will be used for towns that form well-defined "pockets" of street name/house number addresses.

The selection of these counties did involve some judgement on our part. If we had conducted a postal check for these areas, we would indeed have had more information, but we do not believe this information would make the determination of U/L areas that much more accurate. And, for the areas then selected for U/L, we would have wasted the costs for preparatory, implementation, and processing phases of the postal check. Furthermore, once a decision was made to use the U/L methodology, we did not believe we could wait until Spring 1989 to delineate these areas since they involve significantly different workloads, procedures, and management for the affected district offices.

We did not assume that the same areas that experienced problems in 1980 would have similar problems in 1990. Instead, we selected those areas which had characteristics similar to areas where we had the most deliverability problems in 1980. Many of them are the same, but this is because little has changed since 1980. Our experiences in the Address List Compilation Test and the 1986 test census confirmed that we still would face deliverability problems with a mail census in such areas.

The mail response rates were several points higher for U/L areas in the DR, but it always is difficult to generalize these types of results from tests to actual decennial conditions. We don't estimate savings, per se, for U/L areas, but rather expect to achieve better responses rates than if we used a mail-out approach. Thus, with U/L, we should avoid extra nonresponse follow-up costs and the extra processing costs and complexities resulting from a postal check (done for mail-out areas) just before census day. These are the types of problems that made it

so difficult in these areas in 1980, and thus to be avoided in 1990.

Although we did not make this decision to save money (but rather, to improve delivery and return of the forms relative to a mail-out approach), avoiding these costs should help offset the higher costs for Bureau delivery compared to USPS delivery. That is, we estimate U/L for approximately 11.5 million units will cost about $16.8 million units, or about $1.46 per unit. For approximately 32 million units in the Prelist MO/MB areas, we estimate the costs (including field and processing costs for APOC, APOC reconciliation, casing, and postage for the mailout) to be about $36 million, or about $1.13 per unit. (Another 56.3 million housing units, for which we purchased and updated vendor lists will be enumerated using mail out/mail back and 6.5 million using list/enumerate methods.)

QUESTION:

It is our understanding that the Bureau will spend $238.9 million on the Automated Geographic System between 1983-1993. However, in last year's appropriation hearings the Bureau responded that the maximum potential costs for its geographic support system through 1992 would be $345.1 million.

What caused the significant reduction in anticipated expenditures for the Geographic Support System?

ANSWER:

We have not made any changes to the capabilities of the geographic support system. We currently estimate that our costs through 1993 will be $330.1 million to produce the geographic products comparable to the geographic products we produced from 1980 census. The $345.1 million figure included the maximum potential costs through 1992 including $35.6 million to produce a substantial number of additional geographic products that are not in the final budget.

QUESTION:

How much does the Bureau anticipate spending on the maintenance for this system through the next decade? When will funds for this maintenance program be requested?

ANSWER:

We are continuing our discussion with other Federal agencies, including the U.S. Geological Survey and the Federal Highway Administration, to determine the most cost effective way to maintain the automated geographic system data base. Our mutual objective is to eliminate any duplication of effort. Until we reach agreement on a maintenance strategy, we cannot request funds for the maintenance program.

QUESTION:

How much of the cost of the automated geographic system is reflected in the estimated cost of the 1990 Census? How much of the cost is reflected in other budget line items?

ANSWER:

The current estimated cost of the automated geographic system is $330.1 million. The 1990 Decennial Census includes $80.9 million for use of the automated geographic system and $90.0 million for developing aspects of the system specifically to support the census; $158.3 million is reflected in other funding sources.

Horticultural Specialties Census

QUESTION:

Over the last 4 years we have appropriated $1,500,000 for the Census of Horticultural Specialties. In providing last year's increment of $500,000, we required that the Horticultural Specialties Industry ought to reimburse Census up to $300,000. Earlier we were advised that Census had met with industry representatives and that there was agreement that industry would supply the final $400,000 by FY 1990 that is needed to process and publish the data.

How much has the Horticultural Specialties Industry supplied in FY 1989?

ANSWER:

The Horticultural Specialties Industry has not supplied any reimbursement in FY 89.

QUESTION:

By letter of April 13, 1989, The Florists' Transworld Delivery Association requested that the Committee appropriate the $400,000 so, "that the data just collected can be compiled and the report published." I take it that this is the same $400,000 they had previously agreed to supply. What happened to the agreement?

ANSWER:

Yes, it appears to be the same $400,000. At the meeting, they agreed to be responsible for obtaining the funds needed to complete the census. The administration supports the intent of the committee to have the industry provide additional resources per the FY 89 Appropriations Conference Report 100-979.

Economic Development Administration

QUESTION:

Last year there was interest in providing additional funding for the Bedford-Stuyvesant restoration corporation's work that covers

653 blocks in Central Brooklyn. Since 1980, EDA has provided a guarantee of a $4,000,000 loan on the Commercial Center, as well as a $500,000 Revolving Loan Fund, and $580,000 for a warehouse. The Commercial Center, located in a former milk bottling plant, is the heart of the project which has pumped new life into this community.

The staff visited Bedford-Stuyvesant in late March and found that the Commercial Center is in need of considerable repairs to prevent further water damage and to relocate the highly successful Super Market to larger space.

Has the Department been approached on the need for adding funding to Bedford-Stuyvesant and is the Department ready to participate?

ANSWER:

EDA was approached approximately fifteen months ago with preliminary discussions about non-specific projects in this area of New York City. EDA informed them that New York City had at that time approximately $14 million available in recycled LPW funds, and that they should approach the City of New York with their proposals first. The City did not present any projects in the Bedford-Stuyvesant area for funding using the recycled LPW funds.

Although EDA has had much contact with representatives of Bedford-Stuyvesant since that time, in the ongoing relationship that exists due to the Loan Guarantee and the Revolving Loan Fund, there has been no mention by Bedford-Stuyvesant of need for additional funding for any projects. Specifically, EDA has not been approached on the need for adding funding to this or any other project in the area.

Of course, EDA and the Department would accept and evaluate any application submitted by Bedford-Stuyvesant or any other responsible applicant for its funds. However, any such requests should properly be evaluated against other applications on hand, and funding decisions made on a competitive analysis of the applications.

1989 EDA Special Projects

QUESTION:

Mr. Secretary, last week we received the required report from you on the 12 projects that were specifically mentioned in EDA's 1989 Appropriation. As you may know, our House colleagues wanted this report, but let me thank you for all the work the Inspector General put into compiling it.

We have not been able to fully review it but I have brought it to the attention of my colleagues who have the projects in their states. After they have had an opportunity to look them over we will get back to you. There are two of the projects that I have questions about: We included $2,000,000 for the expansion of a Philadelphia Port Fruit Shed. Is it correct that the sponsors funded this project with other funds and that this earmark is unnecessary?

ANSWER:

EDA and the Office of the Inspector General prepared a report based on their evaluations of EDA special projects. The Department reported to the Appropriations Committees that EDA has been informed by the Philadelphia Port Commission that they do not intend to apply for these funds, as they are unnecessary for the construction or renovations of the Fruit Shed project. Attached is a copy of the letter received by EDA from the Philadelphia Port Commission.

LETTER FROM JOHN P. LaRUE, PRESIDENT, PHILADELPHIA PORT CORP.

December 19, 1988

Mr. Jack Corrigan
Regional Director
Economic Development Administration
105 South Seventh Street/1st Floor
Philadelphia, PA 19106

Dear Mr. Corrigan:

Reference is made to the recently approved Federal Appropriations Act for the fiscal year ending September 30, 1989, allocating $2,000,000 as a grant to the Philadelphia Port Corporation through the Economic Development Administration for the Fruit Shed Expansion Project at Tioga Marine Terminal I and to assist in the expansion of storage and handling facilities at Piers 82 and 84.

This letter advises that the General Assembly of the Commonwealth of Pennsylvania has approved and the Governor of Pennsylvania has signed into law the Capital Budget Project Itemization Act for 1987-1988. That Act provides $6,900,000 for the expansion of the Fruit Shed at Tioga Marine Terminal and $6,430,000 for the expansion and improvement of the Fruit Shed at Piers 82 and 84.

Since the state appropriations exceed the funding provided in the federal legislation, the Philadelphia Port Corporation has determined that it will not be necessary to utilize the $2,000,000 designated for projects at Tioga and Piers 82 and 84.

Additionally, I am advised that the City of Philadelphia has submitted a request to the Economic Development Administration that would provide funding for the reconstruction of the Shunk Street Sewer in South Philadelphia. Although this project, when completed, will primarily serve several large industrial concerns in this area, it will, in fact, provide additional sewer capacity to a number of port-related properties as well. Accordingly, we support this application.

In closing, I was pleased to learn that the Economic Development Administration has expressed its support to consider additional port projects during the current fiscal year. To this end, I have initiated discussions with the City's Department of Commerce to identify a number of potential port projects which could be submitted by the City to your office in order to be considered for EDA funding. I look forward to working with you and Bill Hankowsky as we finalize the parameters for such a project.

Sincerely,

John P. LaRue
President

QUESTION:

Our House colleagues provided for the Spindletop Regional Development Project in Beaumont, Texas. This is for the initial development of a 14 acre amusement park. Apparently, you think that this is going to be conveyed to a private developer. If this is illegal, how can that happen?

ANSWER:

EDA would not fund a project which violated our statute. According to the information developed during the application and review of this proposal, the City of Beaumont plans to lease the grant improved facilities to a private developer, which is an improper use of grant funds. However, if the Congress were to require by statute that EDA fund this project for this purpose, EDA would have no choice except to do so. Congressionally mandated projects not only bypass EDA procedures, they can circumvent EDA's basic legislative authority, Pubic Works and Economic Development Act of 1965, as amended.

Trade

QUESTION:

I understand that USTR has only one person at the U.S. Mission to the EC in Brussels and that the Department does not have any staff there. Do you believe the U.S. Government has adequate resources in Brussels to keep abreast of EC 1992 developments?

ANSWER:

We are aware of the need for an increased U.S. government presence at the U.S. mission to the EC in Brussels to keep the U.S. business community informed on EC 1992. We are currently reviewing the level of resources we need to deploy to deal with the EC's highly technical 1992 program.

QUESTION:

How is the Administration progressing in developing its policy to implement the President's commitment on steel?

ANSWER:

The current steel program was introduced in 1984 to address the impact of surging and unfairly traded imports. This program is scheduled to expire on September 30, 1989. The steel VRAs were designed to be temporary measures to provide the domestic industry an opportunity to modernize and adjust to international competition.

President Bush has stated that one of his key trade policy goals will be to achieve an international consensus on eliminating unfair trade practices involving steel. Until such a consensus can be reached, the President has indicated his intention to extend the VRAs after September 30, 1989. At the present time, the best approach to future steel policy, including any potential renegotiations, is still under review.

QUESTION:

I understand that the Department has solicited comments and is reviewing its operation of the trade laws within its jurisdiction, namely antidumping and subsidy cases. Will you be considering any changes in the Department's practice regarding ESP offset and profit?

ANSWER:

We have received many comments on the ESP offset, with most parties arguing that we should discontinue our practice of "capping" the offset, i.e, limiting the amount of the offset to the amount of indirect selling expenses deducted from the United States price. We will consider the issues raised in the comments, as well as deduction of profit, in promulgating any new antidumping duty regulations. Our current position remains, however, that elimination of the ESP offset and deduction of related importers' profits would unfairly skew antidumping calculations.

QUESTION:

Do you believe the Department has sufficient statutory guidelines to grant or deny trade zone and subzone requests?

ANSWER:

We are of the opinion that more precise criteria are need for the evaluation of proposals for manufacturing activity in foreign-trade zones, especially subzones. The FTZ Act presently gives the FTZ Board authority to restrict or prohibit activity if it finds it is "detrimental to the public interest," and under this provision the Board has assessed cases in terms of their net economic effect. This generally stated test gives interested parties on both sides of zone issues wide latitude in presenting evidence and arguments. In light of the increasing interest in the use of zones for manufacturing, we believe that more precise statutory criteria would improve the review process in time and substance. We have drafted amendments to the FTZ Board's regulations that include criteria we believe are consistent with the "public interest" provision, and we are prepared to move forward with these regulatory changes if there are not changes to the FTZ Act itself. We are withholding publication for proposed rulemaking until we have had an opportunity to consider the reaction of Congress, particularly the House Ways and Means Committee, to the recent updated reports on zones by the GAO and ITC.

QUESTION:

In light of the Administration's position on the CBI-II Bill, which allows duty-free access to the U.S. market for apparel made and cut in the U.S. (so-called 807A apparel), I would bring to your attention a study recently completed by the General Accounting Office. This study found that the Customs Service can not ensure compliance with existing 807A requirements and that the program is ripe for evasion. Is the Administration proposing increased surveillance of 807A imports if this bill is enacted? (The report is entitled International Trade: The Special Access Program for Caribbean Apparel Imports.)

ANSWER:

Although the U.S. Customs Service is not within the Department of Commerce's area of responsibility or expertise, we understand that Customs has taken action to strengthen its enforcement of the Special Access Program. A new series of audits of the Special Access Program at the National, Regional, District and Port levels has begun.

QUESTION:

Mr. Secretary, the Administration has proposed two amendments to the Caribbean Basin Economic Recovery Expansion Act. One would reduce duties by half on apparel from CBI countries which are covered by quotas. The other would exempt totally from duty garments sewn in the CBI which originate from cotton grown in the region. It seems to me that these amendments would open the door for a very significant increase in imports from this area. Has your Department studied the possible consequences of these amendments?

ANSWER:

In the Administration's statement regarding H.R. 1233, it was suggested that the President be given authority to reduce duties on goods subject to quota. The authority would be limited to a fifty percent reduction, except in the case of apparel assembled in the region from fabric formed and cut in the region from indigenous cotton fibers. Although no formal studies have been completed, because the quotas would limit the amount of goods that could enter under reduced duties, we do not see the proposal as posing a threat to domestic manufacturers.

Renewable Energy Program

QUESTION:

Senator Wyche Fowler and others have written of their interest in the Department's Export Development Program for the renewable energy equipment sector.. What is the current level of ITA funding for this sector and how much is included in the 1990 Budget?

ANSWER:

Approximately $50,000 is included in ITA's FY 1989 appropriation to fund one industry specialist responsible for the renewable energy equipment sector. The same level of funding has been included in ITA's FY 1990 budget proposal.

In addition to the ITA funding, ITA has access to approximately $200,000 in reimbursable funds from the Department of Energy for specific export development projects involving the renewable energy equipment sector.

LETTER FROM SENATOR WYCHE FOWLER, JR.

March 6, 1989

The Honorable Ernest F. Hollings, Chairman
Subcommittee on Commerce, Justice, and State,
the Judiciary and Related Agencies
Unites States Capitol, Room 146-A
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to ask your subcommittee's assistance in a matter of great importance to me.

As you may already know, this session I have introduced S. 488, legislation designed to promote the further development of renewable energy technologies, of which 65 percent of current sales are exported overseas. I am therefore very concerned about the fact that the Renewable Energy Specialist's position will be phased out when the current occupant leaves in 1990 to work in the private sector. I strongly believe the industry needs to have proper staffing and minor support in statistical collection and analysis, which is performed by the Department of Commerce routinely for other industries.

Mr. Chairman, I beleive the following report language would be very helpful in promoting these important technologies which are facing serious international competition:

> "This subcommittee supports ITA's efforts to promote renewable energy exports and directs $175,000 to assist the U.S. industry with statistical sales analysis and requires that the Renewable Energy Specialist position at ITA be maintained throughout FY'90."

Thank you for your assistance in this matter. Please do not hesitate to call me or my staff assistant, Tracey Thornton if you need additional information.

Sincerely,

Wyche Fowler Jr.

WYCHE FOWLER, JR.
United States Senator

QUESTION:

It has been suggested that an increase of $125,000 would be helpful in 1990 to assist the U.S. Renewable Energy Industry with statistical sale analysis. Did ITA propose such an increase for 1990? Could such an increase be used in 1990?

ANSWER:

ITA has not proposed any increase in FY 1990 funding for its trade development activities involving the renewable energy equipment sector. We consider one FTE, coupled with the funds from the Department of Energy, to be adequate support for the renewable energy equipment sector.

International Trade Administration

QUESTION:

GAO recently issued a report on ITA's Export Promotion Program which concluded that the current organizational structure is overly costly and encumbers ITA's overall productivity. What steps do you plan to take to streamline ITA?

ANSWER:

The GAO cited problems with ITA's export promotion program, and as one solution, suggested reorganization. ITA established a task force, under the direction of the Deputy Under Secretary, to review the program. The task force effort is nearing completion and will make recommendations to address concerns raised by the GAO with respect to the trade promotion roles and responsibilities of each ITA unit. In addition, the task force will recommend improvements in trade event planning, scheduling and implementation. It is expected that these steps will improve the export promotion program (with particular attention to streamlining operations and enhancing productivity). Incoming ITA management will assess this issue within the context of overall ITA responsibilities to determine whether organizational change is needed.

QUESTION:

The GAO report also highlighted the growth in deputy assistant secretary positions in ITA. Please explain why ITA needs 23 deputy assistant secretaries when overall staffing-levels have declined. How many of ITA's 29 secretary level positions are filled by career employees?

ANSWER:

Budgetary constraints have reduced ITA's employment during the past several years, but our areas of responsibility have not diminished.

Of ITA's 23 Deputy Assistant Secretary positions, nine positions are currently vacant, seven are filled by career employees, and seven are occupied by non-career employees.

QUESTION:

Over the past 3 or 4 years funds have been requested for a series of so called "competitive assessments." Exactly how many have been completed? How are they used? Please be specific.

ANSWER:

The Competitive Assessment Program analyzes near and long-term competitiveness issues and problems facing specific U.S. industry sectors. The assessments are used extensively by the TD sectors to support the development and management of U.S. Government trade policies, and in a variety of other ways: ITC cases, Congressional debates, Ex-Im Bank financing discussions and policy changes, and Justice Department antitrust examinations. Assessments also have led to the establishment of trade missions, trade shows, industry conferences and workshops convened on competitiveness issues, and have served to stimulate further studies by industry and trade associations.

A total of fifty-one competitive assessments have been published to date, 37 in the last 4 years as shown on the following table:

Published Competitive Assessments
(By TD Industry Sectors)

Trade Information and Analysis	
Petrochemical	'82
Civil Aircraft	'84
Advanced Ceramics	'84
Information Services	'84
Int'l Construction	'84
Mfg. Automation Equip.	'84
Pharmaceutical	'84

Capital Goods & Int'l Constr.	
Renewable Energy Equip.	'84
Farm Machinery	'85
Ball & Roller Bearings	'85
Oil Field Equipment	'85
Flex. Mfg. Systems	'85
Construction Equip.	'85
Elec.Power Gen. Equip.	'85
Water Resources Equip.	'85
Transformer	'86
Mining Machinery	'86
Textile Machinery	'87
Robotics	'87
CAD/CAM Equipment	'87
Mater. Handling Equip.	'87
Electric Motors	'88
Int'l Construction (Update)	'89
Paper Making Machinery	'89

Basic Industries	
Solid Wood Products	'84
Biotechnology	'84
Methanol	'85
Herbicide	'85
Reinfor. Compos. Fibers	'85
Nitrogen Fertilizer	'85
Ethylene	'86
Cement	'87

Auto Affairs & Consumer Goods	
Automobiles (1983)	'84
Auto Parts	'85
Wood & Upholstered Furn.	'85
Automobiles (1984)	'85
Automobiles (1985)	'87
Sports Equipment	'88

Science & Electronics	
Fiber Optics	'84
Software	'84
Semicondt. Mfg. Equip.	'85
Disk Storage	'85
Microcomputer Systems	'86
Cent. Off. Digit. Swit.	'86
Cellular Radio Equip.	'88
Fiber Optics (Update)	'89
Diag. Imaging Equip.	'89

Aerospace		Services	
General Aviation	'86		
Civil Helicopter	'88	Data Processing Serv.	'84
		Equipment Leasing	'85

QUESTION:

Are funds to support CIMS' full implementation and to develop the National Trade Data Bank included in the "Export Promotion Service" line item?

ANSWER:

The FY 1990 request for the export promotion services line item contains funds for basic CIMS operation.

Basic CIMS services include five day per week, 12 hour per day operation of the CIMS central database and communications system using the CIMS software in its current form, as well as routine daily use by all domestic and foreign offices where CIMS has been installed. Routine use includes local maintenance of contact files, transmission of selected portions of these files via data communications, telex or electronic medium, such as diskettes of tape where appropriate electronic communications channels are unavailable.

Funds to develop the National Trade Bank have been requested by the Census Bureau.

QUESTION:

Your submission states that the current target date for completing the Commercial Information Management System is September 1989. How many sites are currently fully operational? Please provide documentation to support the September 1989 implementation date.

ANSWER:

The International Trade Administration is managing a study of CIMS technology management issues and technical performance capabilities. The study will cover a technical review of the CIMS system design, a technological assessment, a review of the CIMS management process and procedures, and the user support structure. The Department will address such technological capabilities as compatibility with the pending National Trade Data Bank.

Following the technical review, the Department will assess CIMS objectives and budgetary constraints. The Department is committed to installing CIMS at all scheduled US&FCS sites by the end of December 1989.

Currently, CIMS is operational at US&FCS headquarters and all 47 district offices. Thirty-four overseas posts are operational in markets which account for more than 71 percent of U.S. exports. By June 1989, all VS sites will be CIMS operational. These installations are located in countries which collectively account for 85 percent of U.S. exports.

Import Administration

QUESTION:

You are requesting an increase of 24 positions and $1,287,000 for two subgroups--Compliance and the Central Records Unit/Foreign Subsidy Library, (p. ITA-65). The details of this requested increase are combined, (pp. ITA-68,69). Considering the diverse duties of these subgroups, please provide the details of the requested increase separately.

ANSWER:

The increase requests for the two subgroups--Compliance and the Central Record Unit/Foreign Subsidies Library have now been provided separately (see attached exhibits 1-4).

Exhibit 1

Department of Commerce
International Trade Administration
Operations and Administration
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Dollar in thousands)

Activity: Import Administration
Subactivity: Import Administration
Program Changes: Expand AD/CVD Compliance (DAS Compliance)

Object Class		FY 1990 Increase/ (Decrease) Budget Auth.
11	Personnel compensation	
11.1	Full-time permanent	507
11.3	Other than full-time peramanent	0
11.5	Other personnel compensation	32
11.8	Special personnel services payments	0
11.9	Total personnel compensation	539
12.1	Civilian personnel benefits	135
13	Benefits for former personnel	0
21	Travel and transportation of persons	44
22	Transportation of things	0
23.1	Rental payments to GSA	123
23.2	Rental payments to others	0
23.3	Communications, utilities and miscellaneous charges	53
24	Printing and reproduction	2
25	Other services	233
26	Supplies and materials	3
31	Equipment	19
32	Lands and structures	0
33	Investments and loans	0
41	Grants, subsidies and contributions	0
42	Insurence claims and indemnities	0
43	Interest and dividends	0
44	Refunds	0
99	Total	1,151

Exhibit 2

Department of Commerce
International Trade Administration
Operations and Administration
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Dollar in thousands)

Activity: Import Administration
Subactivity: Import Administration
Program Changes: Expand AD/CVD Compliance (CRU/FSL)

Object Class		FY 1990 Increase/ (Decrease) Budget Auth.
11	Personnel compensation	
11.1	Full-time permanent	65
11.3	Other than full-time peramanent	0
11.5	Other personnel compensation	0
11.8	Special personnel services payments	0
11.9	Total personnel compensation	65
12.1	Civilian personnel benefits	16
13	Benefits for former personnel	0
21	Travel and transportation of persons	0
22	Transportation of things	0
23.1	Rental payments to GSA	25
23.2	Rental payments to others	0
23.3	Communications, utilities and miscellaneous charges	11
24	Printing and reproduction	0
25	Other services	14
26	Supplies and materials	1
31	Equipment	4
32	Lands and structures	0
33	Investments and loans	0
41	Grants, subsidies and contributions	0
42	Insurence claims and indemnities	0
43	Interest and dividends	0
44	Refunds	0
99	Total	136

Exhibit 3

Department of Commerce
International Trade Administration
Operations and Administration
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Dollar in thousands)

Activity: Import Administration
Subactivity: Import Administration
Program Changes: Expand AD/CVD Compliance (DAS Compliance)

Title	Grade	Number	Annual Salary	Total Salaries
Supervisory import compliance specialist	GM-14	1	48,592	$48,572
Supervisory computer programmer analyst	GM-14	1	48,592	48,592
Senior import compliance specialist	GM-13	2	41,121	82,242
Senior computer programmer analyst	GM-13	1	41,121	41,121
Import compliance specialist	GS-12	9	34,580	311,220
Computer programmer analyst	GS-11	1	28,852	28,852
Personnel staffing specialist	GS-11	1	28,852	28,852
Import compliance specialist	GS-9	1	23,846	23,846
Computer systems specialist	GS-9	1	23,846	23,846
Budget analyst	GS-9	1	23,846	23,846
Clerk typist	GS-4	1	15,632	15,632
Total		20		676,641
Less Lapse (25%)		(5)		(169,160)
Total full-time permanent		15		507,481

Personnel Data

Full-time Equivalent Employment:	
Full-time permanent	15
Other than full-time permanent	0
Total:	15
Authorized Positions:	
Full-time permanent	20
Other than full-time permanent	0
Total:	20

Exhibit 4

Department of Commerce
International Trade Administration
Operations and Administration
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Dollar in thousands)

Activity: Import Administration
Subactivity: Import Administration
Program Changes: Expand AD/CVD Compliance (CRU/FSL)

Title	Grade	Number	Annual Salary	Total Salaries
Technical information specialist	GS-9	2	23,846	47,692
Technical information specialist	GS-7	2	19,493	38,986
Total		4		86,678
Less Lapse (25%)		(1)		(21,670)
Total full-time permanent		3		65,000

Personnel Data

Full-time Equivalent Employment:	
Full-time permanent	3
Other than full-time permanent	0
Total:	3
Authorized Positions:	
Full-time permanent	4
Other than full-time permanent	0
Total:	4

QUESTION:

You justify the increase requested for Compliance on the basis of a projected increase in annual administrative reviews of antidumping and countervailing duty orders. The projected

increase in administrative reviews is in turn based on an estimate of future antidumping and countervailing duty investigations. How did you derive these estimates?

ANSWER:

Estimates of new cases are based on historical trends for petition filings, advance information on filings (when available), and agency officials' opinions of expected industry reactions to foreseeable events. The average number of new antidumping (AD) and countervailing duty (CVD) cases in this decade is about 90 per year; the range has been from a high of 195 cases in 1982 to a low of 23 in 1987. We have concluded from these historical figures that it is reasonable to plan for at least 90 new filings in each of the next five years.

As a result of the September 30, 1989, expiration of the Voluntary Restraint Agreements on steel import negotiated in 1984 and persistent rumors reported in trade journals that the U.S. Steel industry planned to file as many as 400 AD and CVD cases, we thought it reasonable to add 80 cases to the 90 cases we would have otherwise expected.

We also predicted a slight increase over the average in the years following FY 1987 because the FY 1987 numbers were extraordinarily low. One explanation for the dropoff during FY 1987 is that potential petitioners were waiting to learn the effect on the AD and CVD laws of the then-developing Omnibus Trade and Competitiveness Act (passed in 1988).

The projected increase in administrative reviews for Compliance is based on our existing caseload plus the additional reviews generated by Investigations from the previous fiscal year. The current average of Investigations' cases that become Compliance reviews is 53%. The projected increase to 362 for FY 1990 reflects the number of estimated reviews for FY 1989 (268) plus 53% of the estimated reviews for FY 1989 (268) plus 53% of the estimated number of AD investigations (120), CVD investigations (50) and suspension agreements negotiated (7) from Investigations for FY 1989.

QUESTION:

We note that your estimates of new investigations differ significantly from estimates by the International Trade Commission, whose appropriations are also handled by this Committee. These respective estimates from this year's budget justifications are as follows.

	Fiscal Year		
	1988	1989	1990
ITA (p. ITA-61)	100	170	115
ITC (p. 14)	65	75	75

Did you compare your estimates with those of the International Trade Commission? Please explain the differences in these estimates.

ANSWER:

Comparing the two agencies' estimated caseloads is difficult. AD and CVD cases are often filed as companion cases. That is, a single U.S. industry petitions for relief from dumped or unfairly subsidized imports of one product from more than one country. When an AD or CVD complaint is filed, the ITC is charged with determining whether the petitioning U.S. industry is materially injured, while Commerce is charged with determining whether unfair trading practices exist with respect to imports from each country named in the petition. Thus, a case involving a single product from multiple countries amounts to a single investigation from the ITC's point of view (i.e., an investigation only of the U.S. industry), but multiple investigations (one for each country involved) from Commerce's viewpoint.

For example, the Import Administration's recent AD and CVD actions involving antifriction bearing imports comprised 55 separate investigations (i.e., 5 product types from 11 countries). These filings resulted in only five investigations for the ITC.

Another factor in contributing to the ITC's lower estimate is that the ITC is not required to make an injury determination in all CVD cases. In addition, if ITA determines that a product is not being subsidized or dropped, the ITC does not need to investigate whether there has been material injury.

QUESTION:

You are also requesting an additional 15 positions and $900,000 to implement certain provisions of the 1988 Trade Act related to antidumping and countervailing duty laws (p. ITA-73). According to your request, you anticipate that these sections of the Act will generate additional AD/CVD cases and related workload.

Are these anticipated AD/CVD cases in addition to those cases estimated above?

ANSWER:

Yes. The additional AD/CVD cases and related workload anticipated as a result of the 1988 Trade Act were not considered in the earlier estimate because, at the time Import Administration's budget was first prepared, the Trade Act had not yet been passed by Congress.

QUESTION:

Are your estimates of new cases one time estimates or annual estimates? (The discussion on pages ITA-73 through 76 appears to mix one time and annual estimates.)

ANSWER:

While the overall caseload increase estimate related to the Trade Act is 16 cases annually, the case mix will vary from year to year.

QUESTION:

On page ITA-76, you state that Section 1336 of the 1988 Act mandates that Commerce undertake a study regarding the new market orientation of the People's Republic of China and that this study will require 1 economist and 1 clerk-typist. Since this is a one-time study that is due August 23, 1989, how do you justify a continuing need for these additional personnel?

ANSWER:

The study on the People's Republic of China is the first step in the analysis of how the antidumping laws should be applied to nonmarket economy countries that are slowly opening up sections of their economies to market forces. We anticipate that the study will generate congressional hearings and questions, and the results may eventually lead to new legislation in this area and further study of nonmarket economy countries. (e.g., Hungary).

New Materials Center

QUESTION:

Over the last 3 Fiscal years we have appropriated $10,400,000 to ITA for a new materials center.

Where is that Center located?

ANSWER:

The Center is located on the campus of Iowa State University in Ames, Iowa and is part of their Institute for Physical Research and Technology.

QUESTION:

What is the purpose of the Center?

ANSWER:

The purpose of the Center is to facilitate the commercialization of selected technologies. The Center advances these technologies through applied research and prepares them for commercialization through a variety of financial, legal and business development services.

QUESTION:

How have appropriated funds been used by the Center?

ANSWER:

The Center has used the appropriated funds to conduct applied research and obtain patents on the fruits thereof, to purchase market research studies and business development consulting services, and to provide administrative and management support to the center.

QUESTION:

What other funds have been available to the Center?

ANSWER:

The Center received $6,000,000 from the Energy Department for the design and construction of facilities to house the Center.

QUESTION:

There is a Department of Commerce fact sheet which indicates that each year's appropriation covers a 2 year period of funding. Why do the funding periods overlap?

ANSWER:

The grant period for the funds appropriated in FY 1987 was for 25 months and was designed to provide enough time to get the program started and to carry out the applied research and business development called for in their request for financial assistance. The Department of Commerce funded a continuation of the original grant in FY 1988. That continuation called for six new projects and a 12 month extension of the grant period.

Tailored Clothing Technology Corporation

QUESTION:

Since 1981 the Department has provided a total of $18,700,000 to the Tailored Clothing Technology Corporation, commonly known as TC Squared. The industry has matched that amount in a unique government-industry-labor partnership to hold on to the American Apparel Industry.

TC Squared was originally a Departmental initiative, but after a few years Commerce stopped budgeting for it and Congress has had to maintain the funding. There is no funding budgeted for Fiscal 1990.

I note that both the Japanese and the European Community Governments are funding Apparel Technology Programs far in excess of what our Government has done for TC Squared. Those entities are each providing $8 to $10 million for Apparel Technology Development. Yet, I notice that your budget proposal contains no funds for TC Squared.

Mr. Secretary, are you familiar with this program and do you agree with the previous Administration's withdrawal of support for TC Squared?

ANSWER:

Our position is consistent with the previous Administration's. The Government has funded this project for nine years. The private sponsors of TC squared can finance the entire operation without continued Government support.

QUESTION:

TC Squared has contracted with the Singer Company to manufacture the robotic machines they developed. Earlier in the year there was a report that a Far East subsidiary of a Canadian company was going to buy out Singer. Then we heard that an American with a 25 percent interest in Singer was teaming with a Malaysian group to take over Singer. Either way, the robotics we developed to strengthen our position against foreign imports could land in the hands of our competition.

In this situation, who holds the patents for these machines?

What steps has Commerce taken to keep these machines from falling into the hands of our competition?

ANSWER:

TC Squared and their non-profit contractor, Draper Labs of Cambridge, MA, hold all the patents. Our attorneys and TC Squared attorneys are in the process of determining if any of these patents have been assigned to Singer and verifying that all developed technology and patents will remain in this country. TC Squared is in the process of making arrangements to have the machines produced by another U.S. equipment manufacturer.

QUESTION:

Does the contract for the manufacture of these machines specifically ban their being produced for any foreign interest?

ANSWER:

The latest agreement with Singer allows the sale of any new machinery to U.S. apparel producers only for five years before Singer can sell internationally. All parties have agreed that a five year agreement on domestic sales was an equitable arrangement.

Bureau of Export Administration

QUESTION:

The Bureau of Export Administration has instituted and electronic licensing system for the submission of license applications. How many license applications are now being submitted electronically? What are the implications for the Bureau's budget needs?

ANSWER:

In the month of March, 1,280 export applications were received by BXA on our electronic network ELAIN. This represents about 15% of the total number of applications received during the month of March. During FY 1989, monthly submissions via ELAIN have varied between 11-15% of applications received. Presently, there are only three commercial networks available to exporters wishing to submit applications. As a greater number of companies begin to provide services for ELAIN, usage may rise.

The effect of ELAIN on future BXA budgets is minimal. BXA has already realized savings by reducing data-entry personnel formerly needed to input the information on license applications into the computer. Real savings from ELAIN accrue to the private sector which receives licenses more quickly as a result of ELAIN.

QUESTION:

To what extent does the export license application review process lend itself to the use of "expert systems," i.e., artificial intelligence, to either make or assist in the making of licensing decisions? What efforts are underway in this area? What is their anticipated cost and estimated future budgetary impact?

ANSWER:

The license process does not lend itself well to this approach. The process is not diagnostic in nature.

We are, however, developing a commodity classification system based on artificial intelligence. The system will be complete in about 24 months.

QUESTION:

COCOM discussions on streamlining began over a year ago. What is the status of such efforts? How would a substantially reduced control list affect the Bureau of Export Administration's budgetary needs?

ANSWER:

Decontrols that were based on last year's streamlining efforts have been implemented. Although this process was originally conceived as a one year exercise, COCOM has decided to continue this effort on an ongoing basis.

The efforts required to generate a "substantially" reduced Control List will require additional resources. Streamlining the Control List requires a careful study of the strategic rationale for control as well as a study of the effects of emerging technology. The effort to maintain a streamlined Control List will require increased industry contact and interagency negotiation. While further decontrol would decrease the total number of license applications, BXA's budgetary needs would not be reduced proportionally, since those items involving the least amount of review would be decontrolled first.

QUESTION:

The Bureau of Export Administration opened a western regional office in Southern California last year. Since it has no licensing authority, how has it affected the Bureau's efficiency?

ANSWER:

Our Western Regional Office (WRO) is a major focal point in BXA's outreach program to the business community. It has responsibility for providing assistance to a region that accounts for over half of the dollar value of all license applications.

In addition to the individual contact of answering over 300 calls a day from exporters, the WRO is a central coordinator of BXA's seminar program on the West coast. Its location serves as the focus of both BXA's in-house training seminars and public outreach programs.

The WRO participates in our Distribution License (DL) System Review program. Under this program, BXA personnel review a DL holder's Internal Review program, the program through which a company self-enforces U.S. export control regulations.

By participating in these System Reviews in the Western region, the WRO allows our System Review personnel here in Washington to engage in a larger number of system reviews overseas. This increased ability to monitor the internal control programs of overseas distributorships has been an important addition to our objective of monitoring overall overseas compliance with U.S. export control programs.

QUESTION:

Over the past several years, a number of general licenses have been introduced, eliminating the need to obtain individual validated licenses. How has this affected the number of individual license applications processed annually? How has any reduction affected the numbers of licensing officers needed and their reviews of specific license applications? What impact has the profusion of such licenses had on the export community's ability to comprehend and comply with export control requirements?

ANSWER:

We estimate that the implementation of General Licenses such as GFW and G-COM will result in a reduction of approximately 20,000 licenses processed this year. However, this has not resulted in the need for substantially fewer licensing officers. The licenses which have been eliminated are those which require the least amount of review and can be handled relatively quickly. (See response to Question on Expert Systems.) A licensing officer working with these types of cases (mainly COCOM licenses) will process 7,000 licenses annually. Meanwhile, a licensing officer handling more difficult cases to more sensitive locations (for example, those which require review by other agencies) will process an average of 980 cases in a year. As we reduce demand for man-power at the low end we can speed-up higher license processing by shifting resources in that direction.

QUESTION:

The United States and its allies have cooperated in controlling high-technology exports for almost 40 years. During this time the United States has been the dominant party in setting export control policy and determining what to control. Some of our allies are now moving toward technological parity with us and even technical superiority for some technologies. How do you believe this will affect our ability to affect the export control agenda, and to the extent it limits that ability, how should the United States respond?

ANSWER:

The wide diffusion of technology through the world presents the United States with challenges on a number of fronts. In the first place, technological parity among the COCOM members has meant that U.S. proposals to add items to the Control List have met resistance unless accompanied by U.S. agreement to decontrol lower level items in order to make the list manageable, and to focus on truly sensitive items.

Streamlining the COCOM List has become a major priority for COCOM members, and a major source of friction. Our interests require that we be perceived as an active and reasonable member of COCOM. Otherwise, we risk undermining the fragile consensus that is the basis for that body.

In addition, we now see a variety of high technology products being produced in a number of non-COCOM countries. In response, the U.S. and other COCOM countries have sought agreements with many of the emerging high technology countries to impose COCOM-like controls on their exports. We have been very successful in this area. We must continue our efforts in this area so that the Soviets do not have uncontrolled access to Free World high technology.

QUESTION:

The President is the ultimate arbiter of interagency disputes on export control matters. In the Reagan administration narrow export control decisions, as well as broad policy issues, occasionally came before him and his top aides, often because Defense objected to Department of Commerce actions. How do you intend to control demands on the President's time on resolving interagency disputes?

ANSWER:

By law, the agencies involved in Export Controls have various mandates which they bring to the process of developing and maintaining the controls, as well as in licensing individual shipments of goods and technologies. There were mechanisms in effect to resolve these conflicts in the previous administration and we are carefully evaluating these mechanisms to ensure that they function efficiently. This process should meet the goal of deciding issues promptly with full consideration of each agency's view. In addition, the procedures must ensure full consideration of the economic impact of the decisions, as required by law. As soon as this administration completes its review of these procedures, we will be able to specifically address your concerns in this area.

QUESTION:

The Soviet Union's decision to modernize its economy and its stated desire to obtain Western technology to do so, coupled with its policies of glasnost and perestroika, have begun to stir debate among our allies on the extent to which Western controls on high technology should be loosened in response to events in the Soviet bloc. Western European countries are pressing for significant relaxation in technology controls. In your view, to what extent should controls be loosened at this time, and what would signal an appropriate time for any further loosening of controls?

ANSWER:

The basis for the current system of multilateral export controls is the agreement among COCOM members of the seriousness of the strategic threat posed by the Soviet Union and its Warsaw Pact allies.

A change in the shared assessment of that threat should be the only basis for loosening controls. If that assessment does change, COCOM will be able to react promptly, as evidenced in the liberalization of controls for China.

Our allies are pressing for relaxation of controls because they view the policies of General Secretary Gorbachev much more favorably than does the United States. They also point out that the current "no exceptions" policy for the Soviet Union was adopted in response to that country's invasion of Afghanistan. Now that Soviet troops have been withdrawn, they believe the basis for that policy no longer exists. We reserve our judgment, however, until we see more action taken by the Soviets to reduce their threat to Western Europe, and to the rest of the Free World.

We should be mindful, however, that a rationalization of controls is not necessarily the same as a relaxation. The United States should be prepared to support reasonable proposals to streamline the Control List so it is focused on truly strategic technology.

Minority Business Development Agency

QUESTION:

Mr. Secretary, I am pleased by your statement the Minority Business Development Agency will remain in Commerce.

When will that decision be formalized in a budget amendment?

ANSWER:

We have been notified by OMB that a budget amendment was transmitted to Congress on May 19, 1989.

QUESTION:

Does that decision involve any change to the way the program has been operated?

ANSWER:

The decision underscores the commitment of the Bush Administration to support minority business enterprises by reinvigoration of the Minority Business Development Agency.

The new Director, with the support of the Assistant Secretary for Administration, has initiated an intense assessment and evaluation of the Agency and all its programs and operations.

A comprehensive plan for the Agency and specific recommendations will be forthcoming at the end of the assessment.

QUESTION:

We know that the State Department has been doing an outstanding job in awarding contracts to minority businesses. How have the other departments and agencies been doing in meeting Commerce Department's preferential procurement goals?

ANSWER:

MBDA requests that the Federal agencies submit Minority Business Development goals on an annual basis. It then monitors the process and progress, and produces an annual report called Federal Agency Performance for Minority Business Development.

The Minority Business Development Program, under the leadership of MBDA, was established under Executive Order 11458 and strengthened by Executive Orders 11625 and 12432. All 25 major and 29 smaller Federal agencies participate in the program.

Indeed the State Department has been doing an outstanding job in awarding procurement contracts (FY 1988 $583,678,000) to minority businesses. The Federal Agency Performance Report for Minority Business Development covering FY 1988 reflects the performance of the Federal Government in providing assistance to Minority Business Enterprises. The report shows an itemized list by the large agencies and shows a combined total of the smaller 29 agencies in the various procurement categories.

Total minority Federal procurement increased from $7,516,960,017 in FY 1987 to $7,818,369,101 in FY 1988 as is shown on Table 6 (attached) of the FY 1988 report. Included in these totals are 8(a) set-aside procurements which were $3,510,505,473 in FY 1987 and $3,647,122,487 in FY 1988. The 8(a) figures are likewise shown by agency on Table 4 of the report, also attached.

TABLE 4

FEDERAL PROCUREMENT ACTIVITIES FOR MINORITY BUSINESS ENTERPRISE 1]

FISCAL YEAR 1988

AGENCY	TOTAL AGENCY PROCUREMENT $	8(A) $	MINORITY DIRECT $	MINORITY SUBCONTRACTS $	MBE TOTAL $	PERCENT MINORITY %	FY 1988 GOAL $	FY 1988 % OF GOAL ACCOMPLISHED %
*ACTION	4,198,983	403,000	39,000	0	442,000	10.5%	371,000	119.1%
*AGRICULTURE	2,014,995,000	64,795,000	18,475,000	5,368,122	88,638,122	4.4%	71,963,000	123.2%
*AID	907,542,488	57,804,345	77,566,746	3,787	135,374,878	14.9%	110,363,937	122.7%
*COMMERCE	556,279,289	43,547,257	10,519,056	2,286,042	56,352,355	10.1%	39,772,000	141.7%
DEFENSE	130,815,000,000	2,162,800,000	1,468,300,000	1,134,300,000	4,765,400,000	3.6%	10,075,000,000	47.3%
EDUCATION	184,102,306	10,216,907	2,961,823	207,995	13,386,725	7.3%	18,694,000	71.6%
*ENERGY	14,936,015,525	193,807,384	11,135,898	314,941,198	519,884,480	3.5%	334,000,000	155.7%
*EPA	1,103,002,205	68,701,970	12,385,279	13,880,000	94,967,249	8.6%	43,000,000	220.9%
*EXPORT-IMPORT BANK	5,016,149	922,560	210,720	0	1,133,280	22.6%	56,000	2023.7%
GSA	8,141,895,000	60,055,000	68,254,000	28,804,000	157,113,000	1.9%	165,001,760	95.2%
*HHS	2,154,641,887	150,002,907	48,940,958	13,374,041	212,317,906	9.9%	114,863,999	184.8%
*HUD	281,180,000	24,427,142	48,345,385	745,620	73,518,147	26.1%	32,288,333	227.7%
*INTERIOR	1,285,999,000	53,509,000	214,224,000	6,308,000	274,041,000	21.3%	116,716,000	234.8%
*ICC	2,400,000	0	192,000	0	192,000	8.0%	140,000	137.1%
JUSTICE**	1,078,724,726	36,434,141	21,335,780	7,265,000	65,034,921	6.0%	.....	.....
*LABOR	543,849,000	14,009,000	23,641,000	7,167,566	44,817,566	8.2%	38,127,000	117.5%
*NASA	8,529,775,000	172,647,000	90,527,000	117,934,000	381,108,000	4.5%	257,900,000	147.8%
*NSF	153,722,785	2,878,035	460,803	895,644	4,234,482	2.8%	1,465,000	289.0%
POSTAL SERVICE***	3,346,123,200	0	137,780,900	17,745,600	155,526,500	4.6%	.....	.....
*SBA	29,329,831	20,530,757	0	0	20,530,757	70.0%	8,750,000	234.6%
*STATE	583,678,000	32,779,000	69,784,000	23,000	102,586,000	17.6%	60,000,000	171.0%
*TRANSPORTATION	2,443,274,000	301,892,000	25,541,000	48,550,000	375,983,000	15.4%	243,000,000	[illegible]
*TREASURY	1,222,920,000	53,114,000	9,927,000	4,729,000	67,770,000	5.5%	31,276,000	[illegible]
*TVA	879,429,319	332,082	19,431,745	1,256,700	21,020,527	2.4%	12,090,000	173.9%
VA	3,335,082,000	82,987,000	42,704,000	16,830,206	142,521,206	4.3%	236,313,000	60.3%
OTHER FEDERAL AGENCIES	972,070,000	38,527,000	5,948,000	0	44,475,000	4.6%	.....	.....
TOTALS	$185,510,245,693	$3,647,122,487	$2,428,631,093	$1,742,615,521	$7,818,369,101	4.2%	$12,011,151,029	65.1%

1] DATA PROVIDED BY AGENCIES ON THE MBDA-91 PROGRAM DATA FORM.
REPORT PREPARED BY DATA RESOURCES DIVISION, MBDA.

* Agencies that have accomplished Fiscal Year 1988 Goals.

** Annual monetary goals were not established for the Justice Dept.

*** Postal Service is exempt from the provisions of PL95-507 and does not establish an annual goal nor subcontract requirements under the 8(a) program.

FISCAL YEAR 1986 THROUGH 1988

AGENCY	TOTAL FY 1986 PROCUREMENT	TOTAL FY 1986 MINORITY	PERCENT MINORITY	TOTAL FY 1987 PROCUREMENT	TOTAL FY 1987 MINORITY	PERCENT MINORITY	TOTAL FY 1988 PROCUREMENT	TOTAL FY 1988 MINORITY	PERCENT MINORITY
ACTION	3,938,000	508,000	12.9%	4,564,000	429,000	9.4%	4,198,983	442,000	10.5%
AGRICULTURE	2,669,074,000	81,989,000	3.1%	2,408,290,000	104,382,140	4.3%	2,014,995,000	88,638,122	4.4%
AID	772,917,370	100,190,586	13.0%	702,882,141	89,554,320	12.7%	907,542,488	135,374,878	14.9%
COMMERCE	381,818,586	39,243,302	10.3%	414,511,786	41,268,204	10.0%	556,279,289	56,352,355	10.1%
DEFENSE	136,497,058,000	4,137,662,000	3.0%	135,340,300,000	4,339,830,000	3.2%	130,815,000,000	4,765,400,000	3.6%
EDUCATION	173,275,197	21,164,739	12.2%	183,396,185	20,072,244	10.9%	184,102,306	13,386,725	7.3%
ENERGY	13,205,586,000	365,988,000	2.8%	14,408,652,483	437,361,550	3.0%	14,936,015,525	519,884,480	3.5%
EPA	597,300,000	45,900,000	7.7%	1,047,700,000	77,767,000	7.4%	1,103,002,205	94,967,249	8.6%
EXPORT-IMPORT BANK	972,956	42,933	4.4%	2,944,802	407,965	13.9%	5,016,149	1,133,280	22.6%
GSA	5,744,633,000	192,754,183	3.4%	5,186,778,979	153,931,000	3.0%	8,141,895,000	157,113,000	1.9%
HHS	1,756,698,745	142,722,804	8.1%	2,067,015,515	177,619,454	8.6%	2,154,641,887	212,317,906	9.9%
HUD	156,926,892	54,746,879	34.9%	204,594,881	56,845,374	27.8%	281,180,000	73,518,147	26.1%
INTERIOR	1,345,564,000	379,886,000	28.2%	1,330,333,000	511,956,000	38.5%	1,285,999,000	274,041,000	21.3%
ICC	2,582,000	134,000	5.2%	2,476,000	131,000	5.3%	2,400,000	192,000	8.0%
JUSTICE	505,692,000	33,250,000	6.6%	933,617,197	41,501,047	4.4%	1,078,724,726	65,034,921	6.0%
LABOR	554,210,000	43,370,000	7.8%	505,914,000	46,469,000	9.2%	543,849,000	44,817,566	8.2%
NASA	7,494,068,000	312,349,000	4.2%	7,787,152,000	361,688,093	4.6%	8,529,775,000	381,108,000	4.5%
NSF	198,823,305	1,750,537	0.9%	205,547,233	4,611,508	2.2%	153,722,785	4,234,482	2.8%
POSTAL SERVICE	3,160,687,900	185,092,400	5.9%	4,528,000,000	256,300,000	5.7%	3,346,123,200	155,526,500	4.6%
SBA	21,003,815	7,533,888	35.9%	21,913,172	6,507,767	29.7%	29,329,831	20,530,757	70.0%
STATE	409,411,000	52,393,000	12.8%	395,168,000	62,513,000	15.8%	583,678,000	102,586,000	17.6%
TRANSPORTATION	2,134,257,000	302,764,000	14.2%	2,182,883,000	330,279,000	15.1%	2,443,274,000	375,983,000	15.4%
TREASURY	615,181,000	43,297,191	7.0%	574,354,000	71,809,000	12.5%	1,222,920,000	67,770,000	5.5%
TVA	2,575,037,441	14,241,573	0.6%	1,439,505,000	119,458,351	8.3%	879,429,319	21,020,527	2.4%
VA	3,183,020,000	119,322,694	3.7%	3,371,432,000	173,703,000	5.2%	3,335,082,000	142,521,206	4.3%
OTHER FEDERAL AGENCIES	819,249,000	33,171,000	4.0%	794,223,000	30,565,000	3.8%	972,070,000	44,475,000	4.6%
TOTALS	$184,978,985,207	$6,711,467,709	3.6%	$186,044,148,374	$7,516,960,017	4.0%	$185,510,245,693	$7,818,369,101	4.2%

QUESTION:

Are you aware of the Office of Inspector General (OIG) reports on MBDA's past management problems and operations?

ANSWER:

Yes I am aware of those reports.

QUESTION:

Have you acted upon the OIG recommendations made in these reports?

ANSWER:

Yes. The recommendations made by Inspector General have been accepted by the Agency. The attached memorandum, dated April 13, 1989 from the OIG clearly indicates that MBDA has responded to the recommendations and implemented the corrective actions necessary to improve the program.

One of the actions was the issuance of the revised and updated "Project Monitoring and Evaluation Handbook" which will improve the results of the on-site visits. The training of the MBDA staff on the use of the new Handbook was completed on March 29, 1989.

Implementing procedures have also been instituted to require new Minority Business Development Centers to have a Certified Public Accountant's certification to verify their acceptable financial management systems within 60 days after receiving award.

In addition, the new position descriptions for the Regional Directors and Deputy Regional Directors emphasized specific dates for performance to ensure responsibilities for both project monitoring and verification of data are met.

These types of positive actions and my full support of the new Director, Kenneth E. Bolton, will significantly improve program operations.

MEMORANDUM FROM CLIFFORD N. MELBY, DIRECTOR, ECONOMIC DEVELOPMENT DIVISION, DEPARTMENT OF COMMERCE

April 13, 1989

MEMORANDUM FOR: George Parish
Audit Liaison
Minority Business Development Agency

FROM: : Clifford N. Melby
Director
Economic Development Division

SUBJECT : Action Plan for Audit Report
No. 3-218-8-009

We have reviewed the Plan and supporting documentation submitted by MBDA to implement the recommendations contained in our Minority Business Development Center Program audit report.

Our review of the Plan and the supporting documentation disclosed that MBDA has taken action to implement recommendations 2, 5, and 7. For audit follow-up reporting purposes, we consider the actions taken by MBDA to implement all of the recommendations contained in Audit Report No. 3-218-8-009 as adequate and no audit action plans are required.

The actions taken by MBDA are included in the attachment.

Attachment

OIG Recommendation No. 2

Establish procedures requiring Business Development Specialists (BDS) to conduct on-site visits to a selected number of clients to validate reported performance--preferably clients who report the largest dollar amount of accomplishments.

Action Taken By MBDA

A revision of both Regional Director and Deputy Regional Director position descriptions has cleared the Office of Personnel and Civil Rights and will be implemented within the regions by February 28, 1989. The new descriptions emphasize specific dates for performance to ensure responsibilities for both project monitoring and verification of data are met.

The Project Monitoring and Evaluation Handbook has been updated, elaborating procedures to review and evaluate MBDA projects, to include on-site visits, report writing, follow-up on corrective actions and verification of performance submissions.

Training of the regional staff and business development specialists on the use of the new Project Monitoring and Evaluation Handbook was completed on March 29, 1989.

OIG's Evaluation Of Action Taken By MBDA

The action taken by MBDA is adequate and we consider recommendation implemented.

OIG Recommendation No. 5

Develop procedures to expand the scope of on-site reviews of MBDCs to include evaluating transactions for compliance with award terms and conditions. Any existing or potential problem should be reported to the Grants Officer for appropriate action.

Action Taken by MBDA

The specific procedures for on-site reviews of MBDCs have been included within the revised Project Monitoring and Evaluation Handbook (pages 3-19) to address the evaluation of transactions for compliance with award terms and conditions. Problem areas will be identified for appropriate action and included within the Quarterly evaluation reports submitted to the Department Grants Officer. Implementation of the new MBDC RFA and use of the Project Monitoring Handbook has already started.

Training of regional staff and business development specialists on the use of the new Project Monitoring and Evaluation Handbook was completed on March 29, 1989.

OIG's Evaluation Of Action Taken By MBDA

The action taken by MBDA is adequate and we consider recommendation implemented.

OIG Recommendation No. 7

Develop procedures which will assure that the MBDCs financial management systems are adequate to provide current, accurate and reliable reports to MBDA. MBDA should consider requiring each recipient to submit a statement from an independent public accountant (IPA) as to the adequacy of the MBDC's accounting systems and internal controls within 90 days after the award. The IPAs' statements would disclose whether the MBDCs accounting systems and internal controls are capable of providing accurate and current reports and protecting the Government's interest. The cost should be a legitimate expense of the cooperative agreement.

Action Taken By MBDA

As of October 1, 1988, the Office of Finance and Federal Assistance (OFFA) started using the Special Term and Condition requiring new MBDCS to have a CPA's certification to verify their acceptable financial management systems within 60 days after receiving an award. Post-Award conferences include a briefing covering this requirement for new award recipients. These certifications are now being received by the DOC Grants Officer through the MBDA regional offices.

OIG'S Evaluation Of Action Taken By MBDA

The action taken by MBDA is adequate and we consider the recommendation implemented.

QUESTION:

What are staffing levels at MBDA?

ANSWER:

The Minority Business Development Agency authorized staffing level is 216 full-time permanent positions and 26 other than permanent positions.

QUESTION:

How are these staffing levels broken down between the Headquarters and Regional offices?

ANSWER:

There are 122 permanent positions and 11 other than permanent positions in headquarters. There are 94 permanent positions and 15 other than permanent positions in the regional offices. The breakdown is 55% and 45% respectively.

QUESTION:

On average, how long does it take to process a competitive grant application package for a Minority Business Development Center (MBDC)?

ANSWER:

Based upon our review of one of our regional offices, it has historically taken 125 days to process a competitive application package for a Minority Business Development Center (MBDC).

QUESTION:

Have any MBDC's had to cease operations because of delays in processing grant applications?

ANSWER:

Yes. Some MBDC's have had to cease operations because of delays in processing award applications.

QUESTION:

In general, do you believe the MBDC clients are satisfied with the services they are provided?

ANSWER:

We do believe that the MBDC clients are satisfied based upon our on-site monitoring. Clients are interviewed on a quarterly basis in person, by letters, and by telephone.

QUESTION:

Have you measured the impact of the services provided by the MBDC Program?

ANSWER:

MBDA uses two performance measures: 1)key performance goals, and 2) return on funding (ROF).

1. The key performance indicators for the program are: Number of Clients Assisted, Hours of Management and Technical Assistance (M&TA) Provided, Financial Packages Approved from Lending Institutions, and Procurements Obtained.

   The goal allocations for these indicators are set by MBDA and they are based on funding and past performance. A history of goal allocations and actual performance of MBDC program for FY 1985 through FY 1988 are as follows:

($ = 000)

	FY 1988	FY 1987	FY 1986	FY 1985
Clients				
Goal	10,308	9,424	8,011	8,578
Actual	10,420	10,206	8,566	10,539
M&TA				
Goal	$ 11,446	$ 15,004	$ 20,447	$ 16,091
Actual	$ 10,666	$ 11,563	$ 11,985	$ 16,361
Financial Packages				
Goal	$373,700	$329,900	$356,700	$237,400
Actual	$551,300	$610,600	$377,700	$356,100
Procurements				
Goal	$747,300	$ 700,000	$800,800	$547,500
Actual	944,500	$1,050,000	$802,500	$738,200

When the results are averaged by performance indicator, the results are as follows:

($ = 000)

Actual Clients	9,933 versus goal of	9,080
Actual M&TA	$12,643 versus goal of	$15,747
Actual Financials	$473,925 versus goal of	$324,425
Actual Procurements	$883,925 versus goal of	$698,900

1. Goals are being met in all categories except M&TA. The FY 1989 MBDC program requirements have been modified to better reflect actual delivery of M&TA services. Formerly, only M&TA hours that were billed to clients were counted toward the overall goal. MBDC's attain their financial and procurement goals by providing brokering (non-billable) services as well as M&TA thus rewarding MBDC's that are able to match clients with opportunities.

2. The ROF for the MBDC program reflects total dollar performance of the program vs. Federal funding provided. For all awards between FY 1986 and FY 1988, the MBDC program averaged $60 in return for each dollar of funding. Total dollar performance represents each dollar of M&TA provided at $50 per hour consulting fee plus the amount of financial packages and procurement contracts obtained by MBDC for its clients. Federal funding is the amount of dollar provided by MBDA for MBDC operations.

QUESTION:

How have "Special Projects", other than MBDC's, been selected and funded in the past?

ANSWER:

In the past, "Special Projects" have been selected and funded by the Director of the Agency based upon analysis of unsolicited proposals by the program staff.

QUESTION:

Are you aware of the allegations of mismanagement that have plagued MBDA in the past? How do you intend to prevent this from occurring under your tenure as Secretary?

ANSWER:

Yes. I am aware of the report dated January 31, 1986, issued by the Inspector General regarding "Improvements Needed in MBDA's Management and Program Support Activities." The objective of the review was to evaluate selected internal administrative activities/functions within MBDA, to assess how effectively they contributed to the accomplishment of MBDA's programs. The report did recommend several management improvements. Some of the management improvement actions implemented by the Agency were the realignment of its organizational structure, filling key vacancies, revising grant processing operations, and providing additional funds to the regions for more on-site monitoring of grantees.

Some of the additional actions implemented by Director Bolton since his swearing-in on April 3, 1989, are as follows:

1. Improved communications between Headquarters and the Regional Offices by scheduling bi-weekly conference calls.

2. Scheduling a series of decision analysis meetings with MBDA staff using the support activities of the Assistant Secretary for Administration.

3. Completing the staffing of the planning office to better organize decisions and policies

   and fully utilize Agency resources for minority business development.

4. Conduct staff meetings on a weekly basis in order to monitor and control Agency operations

5. Will fully utilize the position of Deputy Director to a assist in managing the Agency programs.

I intend to work closely with Director Bolton in thoroughly reviewing the present organizational structure in order to evaluate its effectiveness in addressing the commitments that this Administration has made to reinvigorate the program.

USTTA Fee

QUESTION:

The Administration again proposes a $1.00 "fee" on the tickets of 24,100,000 incoming foreign and domestic passengers, to raise $21,700,000 in Fiscal Year 1990. From this total, USTTA is to use $13,298,000 for tourism promotion. This fee is to be applied to the tickets of 9,600,000 incoming United States citizens, of which 5 percent would be business travelers. What is the interest of these persons in promoting tourism to the United States to justify imposing this so-called user fee on them?

ANSWER:

The proposed fee is intended to support the trade development, trade policy and economic research programs of USTTA. The agency's mission is to stimulate U.S. export earnings, to increase U.S. employment and to promote economic growth through international trade in tourism. In fulfilling this mission it is ultimately the consumer, both the foreign traveler coming to the United States as well as the citizen returning to the United States from travel abroad for whatever reason, who benefits from the programs and services of USTTA.

QUESTION:

As a businessman yourself Mr. Secretary, would you view this as a user fee or a tax if you found it on your ticket?

ANSWER:

A facilitation fee.

QUESTION:

Various members of the travel and tourism industry have advocated this fee as a way to increase federal spending on tourism. Is not the fallacy of that proved right before us in this proposal which raises $21,700,000 in fees while at the same time reduces the tourism budget by $700,000?

ANSWER:

While USTTA projects an estimated income of $21,700,000 for the fiscal year based on anticipated arrivals, it also recognizes that in the first year there may be some delays and other events which cause the actual income derived from the fee to fall short of the target. Thus, as prudent fiscal managers, the Administration has proposed a modest budget of $13,298,000.

Tourism Promotion

QUESTION:

In last year's Bill, this Committee approved $13,800,000 for USTTA, including one of the rare program increases of $2,000,000 for tourism. For 1990 the Administration proposes reducing the Program by nearly $700,000. Worse yet, the Administration plans to further reduce the Tourism Promotion Program by charging the Department's $3,200,000 contribution to the Seville World's Fair to this activity. There would actually be $3,900,000 less than the current level available in 1990 for tourism promotion.

Since the justification doesn't even mention the Seville Contribution, please explain the exact impact of absorbing the $3,200,000 on USTTA's programs?

ANSWER:

The maximum amount of the Commerce contribution would be $3.2 million, and would not necessarily all come from USTTA. Our view is that most if not all the funds should come from the private sector. Once the exact costs are determined, the Department will advise the Committee of the effects.

QUESTION:

In 1990, USTTA plans to eliminate the Multilingual Port Receptionists. In past years this Program has received great praise for facilitating foreign citizens at airports. Why is the funding being eliminated?

ANSWER:

No manager likes to deal with budget reductions, but when they are presented, the goal becomes one of doing the best you can. In reviewing all the options available, it was clear that neither field operations nor headquarters staff could be reduced further, and trade policy is already operating at bare bones. The only areas where reductions could be made were in tourism trade development, research and the port receptionist program.

Tourism Studies

QUESTION:

For 1989, the Congress appropriated $250,000 for a study to explain ways in which small businesses in rural areas can be promoted through travel and tourism, and $150,000 for updating the travel economic impact model. What is the status of these studies?

ANSWER:

Contracts for both studies have been let and work is proceeding on or near schedule.

QUESTION:

Can the studies be completed within the amount available?

ANSWER:

Both studies will be completed within budget.

QUESTION:

When will the results of the studies be available?

ANSWER:

The Rural Tourism Study report will be presented to the Congress around September 1, 1989, and the Travel Economic Impact Model will be updated.

1992 Winter Olympics

QUESTION:

The justifications indicate that USTTA is working on the 1992 Olympics. I take it that it is the intention that these games are to be held in the United States. For the 1980 Winter Olympics at Lake Placid this Committee provided $47,200,000 in federal assistance through the Economic Development Administration for the Olympic facilities. (In addition, we appropriated $22,000,000 to the Bureau of Prisons for new facilities where the Olympic athletes were housed.)

Since the Federal Government has already made that large investment at Lake Placid, can it be assumed that the 1992 Olympics will also be held at Lake Placid?

ANSWER:

At the time USTTA prepared its budget submission, Alaska was vying for an opportunity to host the 1992 Winter Olympics. During the time this budget has been under review, Alaska withdrew as did all other U.S. parties interested in hosting the event.

QUESTION:

If the games are not to be held at Lake Placid, is anyone laboring under the impression that another U.S. site is to be constructed with additional federal assistance?

ANSWER:

There are no current U.S. sites under consideration to host the 1992 Winter Olympics.

World's Fair at Seville

QUESTION:

Am I correct that the Department plans to use $5,000,000 from the proposed tax on international travel tickets to pay its contribution to the World's Fair?

ANSWER:

The Administration has not proposed to tax international travelers. The Administration has proposed the introduction of a user fee to be paid by the travel industry. The Department will fund its share of U.S. government participation in the Seville World's Fair.

QUESTION:

Previous practice has been for USIA to budget all the costs of an overseas World's Fair. Did the Department oppose distributing it among 3 agencies?

ANSWER:

Yes.

QUESTION:

The plans for the Fair provide for Commerce to ante up $350,000 in 1989 to the effort to raise $15,000,000 from the private sector for the U.S. Pavilion at the Fair. Have those funds been transferred to USIA?

ANSWER:

USTTA has not been presented with a request from USIA for the Department of Commerce's share of the FY 1989 costs of its Seville World's Fair.

Weather Stations

QUESTION:

The Committee now has before it a reprogramming to meet the $21,000,000 budget shortfall in the National Weather Service. The reprogramming calls for a 7.4 percent reduction of all the programs that Congress restored or added to NOAA's budget for 1989 to provide the $13,000,000 of the shortfall that cannot be met within the Weather Service. This reprogramming was a substitute for the one assumed in the 1990 Budget that would have closed 62 weather stations in 1989, and 70 additional stations in 1990.

Mr. Secretary, we appreciate your leadership in the substitute reprogramming. The technology is not yet available to allow consideration of eliminating weather stations. However, I am concerned that the reprogramming only falls on the priorities of Congress and not on the 1989 Budget increases recommended by the Administration. I am advised that if we put all the increases into the pot, then the cutbacks can be reduced to 6.2 percent.

Our House colleagues have decided to solve the problem by appropriating the additional $13,000,000 that would have been produced by the 7.4 percent reductions. Given where we are with respect to the overall deficit ceiling, I don't see how we can consider such a supplemental appropriation unless it is offset, and the only offsets available are further across the board cuts.

Mr. Secretary, what would be your reaction to including all the increases and thereby reducing the amount we have cut Sea Grant, Coastal Zone, etc.?

ANSWER:

There are several reasons why I would not support reducing the amount on all increases. The primary reason is based on program priorities. We cannot reduce the funding requirements for satellites and National Weather Service systems acquisitions.

QUESTION:

We also have the same problem to a larger extent in 1990 in that we have further reduction of $14,800,000 to close the 70 additional stations. The 1990 shortfall is $35,000,000.

I have heard the Department is thinking of covering this by reducing NEXRAD and the other technology that is to replace the weather stations. Is that correct, and if not, just how does the Department expect to cover the $35,000,000?

ANSWER:

First, let me clarify the issue of 1990 shortfall. Due to actions taken in 1989 to reduce operating costs, the amount required to maintain current services levels is $28 million,not $35 million. The Administration is currently evaluating its option for making up this amount now that the decision has been made not to close weather stations in 1990. Potential costs savings within the NEXRAD program and other programs are under consideration.

NOAA Program Decreases

QUESTION:

Appendix H of NOAA's Budget Summary lists 87 programs that are reduced or eliminated that aggregates a total decrease of $335,199,000. So that we may have a clearer picture for our hearing with Dr. Evans tomorrow, may we have by the end of the day a listing which displays how much NOAA requested in the 1990 submission to the Department for each of these programs?

ANSWER:

The table follows below:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
FY 1990 BUDGET

OPERATIONS, RESEARCH, AND FACILITIES

FY 1990 PROPOSED DECREASES
(Dollars in Thousands)

NATIONAL OCEAN SERVICE

	NOAA Request
Mapping, Charting and Geodesy	
o South Carolina Geodetic Surveys...	0
o Vertical Control Network Program........................	3,344
o Multi-Purpose Cadastre Program........................	0
Observation and Assessment	
o Circulatory Survey Program........................	377
o Ocean Assessment Activities.....................	10,259
o California Data Buoys..........................	0
o Federal/State Demo Project with South Carolina.....	0

Ocean and Coastal Management	NOAA Request
o Section 306 and 306A Grants	0
o Section 309 Grants	0
o Estuarine Reserve System Program	1,190
o CZM Program Management	1,779
o Marine Sanctuary Program	2,122
NATIONAL MARINE FISHERIES SERVICE	
Information Collection & Analyses	
Resource Information	
o Resource survey activities	17,853
o Habitat Research	11,363
o Stock Enhance./Disease Res. (Aquaculture) Stuttgart Fac.	1,000
o West Coast Groundfish Research/Tiburon Lab Transfer	904
o Protected Species Research & Marine Research	6,167
o Salmon Treaty Research	2,000
o Atlantic Salmon Research	0
o SEAMAP	1,000
o Antarctic Research	0
o Habitat Evaluation Methodology	0
o Chesapeake Bay Studies	0
o Sub-Arctic Bottomfish Research	0
o MARFIN	1,000
o Right Whale Research	0
o Hawaii FMP Development	0
o Gear Entanglement Studies	750
o Alaska Salmon Enhancement Activities	0
o Limnological Research	0
o Yukon River Chinook Study	0
o Japanese Salmon Interceptions	0
o New England Stock Depletion Studies	0
Fisheries Industry Information	
o Economic and Commercial Fish Statistics	9,940
Information Analyses and Dissemination	
o Near-Shore Fisheries Research/Analysis & Data Analysis	21,920
Conservation and Management Operations:	
Fisheries Management Programs	
o Regional Councils	10,000
o Columbia River Program	0

o Manage Georges Bank Fisheries.....	0
Protected Species Management	
o Endangered Species Recovery Plans.	3,612
o Harbor Seals and Sea Lions........	0
Habitat Conservation	
o Habitat Conservation..............	4,953
State and Industry Assistance Programs:	
Grants to States	
o Interjurisdictional Fisheries Grants..........................	0
o Anadromous Grants................	0
o Striped Bass Research............	0
o Interstate Fisheries Commissions..	1,050
Fisheries Development Program	
o Fisheries Trade Activities........	2,000
o Product, Quality & Safety Research (PQS).................	5,470
o Fish Oil Research................	0
o Mahi Mahi Export Strategies.......	0
o Model Seafood Inspection Program..	0
OCEANIC AND ATMOSPHERIC RESEARCH	
Climate and Air Quality Research	
o Regional Climate Centers	1,092
o NCPO International Climate Panel Activities.....................	250
Atmospheric Programs	
o PROFS............................	3,883
o Weather Modification grants.........................	0
Ocean and Great Lakes Programs	
o Seafloor Processes Research (VENTS)................	0
o GLERL	4,272
o SE FOC program...................	0
o Sea Grant........................	0
o Nat'l Coastal Resources R&D Institute.................	0
o U.S.-Asia Aquaculture Science Exchange...............	0
o Undersea Research................	0
o Key Largo Tropical Research Facility..............	0

	NOAA Request
NATIONAL WEATHER SERVICE	
Operations and Research	
o MARDI	11,000
o Flood Warning System/Colorado River	0
o Staff at Eight WSFO's	0
o Southern Region Headquarters.	11,998
o Data Buoy Test & Engineering Activities	13,560
o Maintenance for Hawaii Data Buoys	0
o Pacific Region HQ with Alaska Region HQ	3,817
o Agriculture Weather Service	0
o Fire Weather Services	1,300
o Fruit Frost Program	0
o Susquehanna River Basin Flood Warning System	0
o NWS Research and Development	2,782
o Close Nonessential offices*	14,800
Systems Acquisition	
o AWIPS	50,000
NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICES	
Satellite Observing Systems:	
o Polar Satellites	125,515
o GOES Satellites	96,831
o Environmental Observing	51,368
o EROS Data Center Operations	0
o NOAA-Port	11,036
o Landsat Operations	0
PROGRAM SUPPORT	
Marine Services	
o Fleet Rehabilitation Program	11,105
Reactivate ships, Increase Days, at sea	12,900

* An amendment to the budget justification, which will maintain offices, is under review within the Administration. No offices will be closed in 1990.

Technology Issues

QUESTION:

The Reagan FY90 Budget proposed eliminating all funding for NIST's new Manufacturing Technology Centers Program, even FY90 funding or the three existing centers. This can as a surprise, given strong DOC support for the program and an agreement between Congress and the Reagan Administration regarding the Trade Act Language which created and authorized the Program. Have you reviewed this new Program, and will you raise the issue of FY90 funding with OMB Director Darman? Do you personally support the Centers Program and related technology extension activities at NIST?

ANSWER:

I support the objective of strengthening the technology base of our small and medium sized manufacturing firms in order to improve our competitive position. However, I do not believe that we should spend additional money on the Centers in FY 1990. The first three Regional Centers only began operation in January of this year and money is currently available to support them through FY 1990. This program can be reviewed along with other priorities in the FY 1991 budget process.

QUESTION:

Last November, I met with DOC officials and agreed in principle to a proposal to reprogram approximately $1 million of the funds appropriated for the Manufacturing Centers Program. It turned out that the three initial Centers could be well funded with $11.5 million of the $12.5 million appropriation. The remaining $1 million could be well spent by supporting related technology extension activities at NIST, including funding the small office which manages the Centers Program. As I understand the situation, DOC requested the reprogramming and mid-level OMB officials turned it down. So, far, OMB also has refused to allow the office managing the Centers Program to even have a name or its Director a title. Why have these DOC proposals been blocked by OMB, why are mid-level OMB official deciding policy in this area, and do you have any plans to personally be briefed on these issues or review them?

ANSWER:

A NIST reprogramming request is being transmitted to the Congress proposing to use $650 thousand of the fiscal year 1988 unobligated balances intended for support to the Regional Centers for the Transfer of Manufacturing Technology to fund the preparation of various important reports and studies mandated in the Technology Competitiveness Act. An additional $450 thousand will be used to provide technical support to the Centers. However, this will not require a reprogramming. A NIST reorganization plan creating the Office of Technology Services was submitted to Congress May 12. This office includes the Manufacturing Technology Centers Program.

QUESTION:

On December 27 of last year, the Superconducting Research Laboratory at NIST's Boulder Facility suffered a major fire, which damage estimated at over $3 million. Since the Government does not carry insurance on such laboratories, rebuilding this important Research Center will require appropriated funds. Do you intend to ask for supplemental appropriations to rebuild the Laboratory? If not, which existing programs do you propose to cut in order to fund reconstruction out of existing funds?

ANSWER:

The total estimated cost of restoring the facility is $3.6 million. Strict deficit reduction targets preclude supplementals without offsets. Maintenance of the other NIST programs is equally important; therefore, reprogramming from other NIST programs is not possible. At this point, we are using our superconductivity funding to restore the laboratory and delaying the research work proposed for this funding. An emergency supplemental will not be proposed.

Currently funds being used in the laboratory restoration are portions of the $2 million in unobligated funds intended for work in Boulder, Colorado, carried over from FY 1988, which were earmarked for the superconductivity program in the FY 1989 Appropriation Report 100-979. The base funds of $2.8 million are assigned to work in both Boulder, Colorado, and Gaithersburg, Maryland, laboratories. The President's budget for 1990 proposes a total program level of $3.5 million for superconductivity. This is an increase of $700 thousand over FY 1989. This increase will be assigned to restoration of the facility. Work will begin on a limited basis in the clean room by August and normal operations of the facility will begin by FY 1991.

QUESTION:

Section III of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 (P.L. 100-519) directs NIST to "annually submit to the Congress, at the time of the release of the President's Budget, a three year budget estimate for the Institute, including funding estimates for each major account and new initiative." When does the Department intend to submit the first three year budget for the Institute?

ANSWER:

The three year budget estimate for NIST covering fiscal years 1990 through 1992 will be transmitted to the Congress shortly. The three year budget includes fiscal year 1990 initiatives totaling $15.3 million and proposed fiscal year 1990 program decreases of $19.5 million.

OMB Circular A-11 states that multi-year planning estimates of President's policy must be consistent with information required for the budget year (1990) and indicate the degree to which specific policy decisions made for the budget year affect multi-year planning levels. Accordingly, estimates for fiscal years 1991 and 1992 reflect incremental out-year requirements of the

1990 initiatives, as well as OMB allowances for inflation and planned management savings.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

QUESTION:

I also noted that the Department's budget virtually eliminated the EDA. In Arkansas the EDA has been the only thing that has helped some of my people, cities, and towns to hang on. Please explain how EDA programs are not benefitting Americans, especially in rural sectors of the country.

ANSWER:

The Administration continues to maintain that the funding of economic development activities is most appropriate and effective at the state and local level for all areas of the country, both rural and urban. In addition:

- o Sustained economic development is contingent upon fiscal stability which will come only with fiscal responsibility which means an elimination of the budget deficit.
- o Problems of economic instability are addressed most effectively by those closest to the problem.
- o The continuation of EDA will simply exacerbate an already critical budget situation. Elimination will save the taxpayers $1 billion through 1994.

QUESTION:

Please explain in detail the Administration's decision to retract its proposal to transfer for the Minority Business Development Agency from Commerce to the Small Business Administration. Since this proposal had been proposed for two consecutive years by President Reagan, please inform the Committee why you concluded the Reagan proposal was wrong.

Was you decision to reverse the Reagan budget proposal based on budgetary considerations or political considerations?

ANSWER:

This is a new administration and President Bush and I both feel strongly that MBDA should be revitalized and reinvigorated at the Department of Commerce. The focus of a federally coordinated Minority Business Development Program should remain within the Department. Cabinet-level relationships provides broader opportunities and increased exposure for minority business enterprises.

The mission of the Commerce Department is to promote the productivity and competitiveness of American industry. As part of the Department of Commerce, the Minority Business Development

Agency has direct access to the mainstream of America's business community and Cabinet-level resources that facilitate assistance to minority entrepreneurs. MBDA will also be able to work with the various agencies within Commerce such as the International Trade Administration and the Economic Development Administration as well as have access to information and other resources from the Bureau of Export Administration and the Bureau of Economic Affairs.

The level of success experienced by MBDA in implementing the provisions of Executive Order 12432, for example, would not have been possible without the interagency support available within the Department of Commerce. We believe that by keeping MBDA in Commerce we will be providing for an enlargement of the American economy and at the same time we will be making gains in the standard of living for everyone.

QUESTION:

What is your view of the effectiveness of MBDA overall, especially in light of the repeated reports by your Inspector General finding major shortcomings in the agency's performance?

Is it appropriate for MBDA to make grants to Big Eight accounting firms to deliver assistance to minority business?

ANSWER:

The Minority Business Development Agency has filled a gap in the marketplace, and in the American economy, by focusing its resources on assisting minority business enterprises in various stages of development, in a variety of industries, through offering a combination of needed services.

The Agency's MBDC Program provides much needed technical and consulting services, at favorable, subsidized rates, to those minority firms which would otherwise be unable to afford this kind of assistance.

Another important service the program provides is in assisting minority companies in obtaining procurements, especially from federal, state and local agencies. In 1987, this assistance resulted in nearly 5,000 procurements worth $1 billion.

As for shortcomings contained in the OIG Report, MBDA has responded to OIG's recommendations and implemented the corrective actions necessary to improve the program as spelled out in more detail in answer to your last question. Further, Director Bolton, since taking office April 3, is vigorously addressing the reinvigoration of the Agency.

The accounting firms have the skills and expertise, the relationships within the business community including financial institutions, as well as the necessary infrastructure in place, to provide the needed assistance to minority businesses. The cost sharing nature of the cooperative agreements is an advantage, as well as the reputation of these firms.

It should also be noted, that MBDA grants its awards through a competitive process, and eligible grant applicants include nonprofit organizations, local and state governments, as well as educational institutions, and community-based business and economic development organizations. Important considerations for eligibility are experience, expertise and the ability to serve the local community's needs.

Lastly, the attached memorandum, dated April 13, 1989 from the OIG clearly indicates that MBDA has responded to the recommendations and implemented the corrective actions necessary to improve the program.

QUESTION:

Has the Department ever conducted a survey of the receipts of MBDA assistance to determine whether they are satisfied with the help they have received? If not, would you agree to conduct such a survey within the next six months?

ANSWER:

The MBDA regional staff, on a quarterly basis, survey the recipients to ascertain whether they are satisfied with the assistance they receive. These quarterly surveys are conducted through on-site visits, telephone calls, and letters. In addition, clients sign a client satisfaction form on which they state their level of satisfaction with the services received. According to these two types of surveys, it appears that the majority of clients are satisfied with the assistance they receive.

Director Bolton has begun a comprehensive assessment and evaluation of the Agency and its programs. This process will include bringing in a diverse group of clients for their input which will further assist the Agency in assessing client satisfaction with the program.

QUESTION:

Do you not think that, in most instances, management counseling and assistance could more efficiently be provided by means other than grants to top-dollar accounting firms?

ANSWER:

The MBDA's award grantees include a variety of different types of firms including nonprofit organizations, small consulting and CPA firms, community-based business and economic development organizations, as well as a city government and some educational institutions. Of a total of 96 centers, only 10 are operated by Big 8 Accounting firms (Laventhol & Horwath, Grant Thornton and Peat Markwick Main). Based on performance evaluations, accounting firms, as a whole, do not seem to be more, or less, efficient in providing assistance than the others. Important considerations for eligibility are experience, expertise and the ability to serve the local community's needs.

I would like to add that Director Bolton has begun a process of assessment and evaluation of the Agency and its programs, which will most certainly include examining how best to provide management counseling and assistance to minority businesses.

QUESTION:

What justification is there, in these days of tight budgets, for free management assistance to minority businesses which have become so large and successful that they no longer fit within the SBA's rather generous definitions of "small business"?

ANSWER:

Some of the Agency's services are rendered free of charge, but most of the management and technical assistance provided is billed to the client company at either $10 per hour (if the company's sales amounts to under $500,000) or at $17.50 per hour (if sales are over $500,000). In FY 88 the Agency's Business Development Center collected $1.7 million in these billable fees which was applied to the cost of the programs.

Unlike SBA's program, the Executive Order 11625 does not restrict the size of minority firms given assistance. However, it is very possible that Director Bolton, after his evaluation, may consider adjustments to the fee structure.

QUESTION:

What steps have you taken to reform MBDA in light of the abuses which have been repeatedly identified by the Department's Inspector General?

ANSWER:

While the OIG Report raised questions on management issues, there were no charges of abuse concerning the program operations. Following the recommendations contained in the Report, steps taken earlier by the Agency included the realignment of its organizational structure, the filling of key vacancies, revising its grant processing operations, and provision of additional funds to the regions for more on-site monitoring of grantees.

Some of the additional actions implemented by Director Bolton since his swearing-in on April 3, 1989, are as follows:

1. Improved communications between Headquarters and the Regional Offices by scheduling bi-weekly conference calls.
2. Scheduled a series of decision analysis meetings with MBDA staff and using the support activities of the Assistant Secretary of Administration.
3. Completing the staffing of the planning office to better organize decisions and policies and fully utilize Agency resources for minority business development.

4. Conducting staff meetings on a weekly basis in order to monitor and control Agency operations.

5. Will fully utilize the position of Deputy Director to to assist him in the task of reinvigorating the Agency.

I would like to add that I believe the most important step I have taken in this regard was to appoint Kenneth Bolton as the new Director of MBDA. He, in turn, has taken the steps to bring on board a cadre of experienced, professional managers who, along with his existing staff, will assist him in the task of reinvigorating the Agency.

I am fully confident in Director Bolton's ability to provide the leadership that is needed to successfully bring about the reinvigoration. Within three months, I am expecting a comprehensive plan from him with his recommendations.

QUESTION:

As you know, $250,000 was included in FY89's appropriation for the Clearinghouse on State and Local Technology Transfer Initiatives. I have a strong interest in this program and would appreciate information on how it's working.

ANSWER:

The Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation has been assigned to the newly established Technology Administration. A Director and staff have been assigned, who have developed and are carrying out a strategic plan for implementing the Clearinghouse (copy attached). The plan includes extensive consultation within the Department, with other Federal agencies, with state and local governments, non-profit organizations, public interest groups such as National Governors' Association, and the private sector.

A report containing an analysis of existing information sources about state and local initiatives and a finding of where the Clearinghouse is most needed and will be submitted to Congress by December 31, 1989.

We anticipate that the primary focus will be to help federal, state, and local governments with their policy analyses and strategic planning processes. The Clearinghouse would serve its role by helping them to save time and be more thorough as they seek their own best answers.

STRATEGIC PLAN

CLEARINGHOUSE FOR STATE AND LOCAL INITIATIVES ON PRODUCTIVITY, TECHNOLOGY, AND INNOVATION *

1. OVERVIEW

This Strategic Plan identifies the statutory authority that establishes the Clearinghouse, outlines the levels of necessary coordination, explains different ways in which the Clearinghouse will provide its services, identifies the resources necessary for start-up operations, and concludes by discussing the required Congressional reports. The Plan is not a list of sequential steps; many elements of the Clearinghouse's coordination, data gathering and dissemination, and administration will run concurrently.

2. SUMMARY OF SECTION 5122 AUTHORITY

Section 5122 of the Omnibus Trade and Competitiveness Act of 1988 establishes a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation in the Office of Productivity, Technology, and Innovation, U.S. Department of Commerce. This section states that the Clearinghouse shall:

- Serve as a central repository for information on
  - Initiatives of State and local governments to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation; and
  - Federal efforts to assist State and local governments to enhance competitiveness, and
- Report to Congress before January 1, 1989 and every three years thereafter on
  - Initiatives of State and local governments, and
  - Recommendations to the President, Congress, and Federal agencies on the appropriate Federal role in stimulating State and local efforts

In addition, Section 5122 states that the Clearinghouse may:

- Establish relationships with State/local governments and sub-state/multi-state organizations,
- Collect information on the nature, extent, and effects of initiatives,
- Disseminate information through reports, directories, handbooks, conferences, and seminars,
- Provide technical assistance and advice including sources of Federal assistance,

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*Prepared by the Office on Productivity, Technology, and Innovation in cooperation with the Office of Intergovernmental Affairs, Economic Development Administration, National Institute of Standards and Technology, and the National Technical Information Service.

- Study ways that Federal agencies and laboratories can use existing policies and programs to support initiatives.
- Make recommendations to the Secretary, and when requested, to other Federal agencies on modifying policies and programs.
- Develop program evaluation methodologies, and when requested, advise State/local governments on their programs' effectiveness.
- Use and disseminate results of the DOC (NIST) survey of State technology extension programs, and
- Enter into contracts for collecting information.

On October 24, 1988, the President signed into law the Act which creates a new Technology Administration within DOC. It is expected that the Clearinghouse will become part of this new entity.

3 . SYSTEM MODELS TO BE USED BY THE CLEARINGHOUSE

It is clear that Congress intended the Clearinghouse to collect information, maintain it in a central repository, and use it to answer inquiries. This type of 'hub' system is particularly well suited for large amounts of general information that can be handled with fairly routine processes. See Exhibit A. It will be an important part of the Clearinghouse operations which will include the collection, indexing, central storage for access, standard data files, additional files for available back-up text, file maintenance, and responses to actual requests for information.

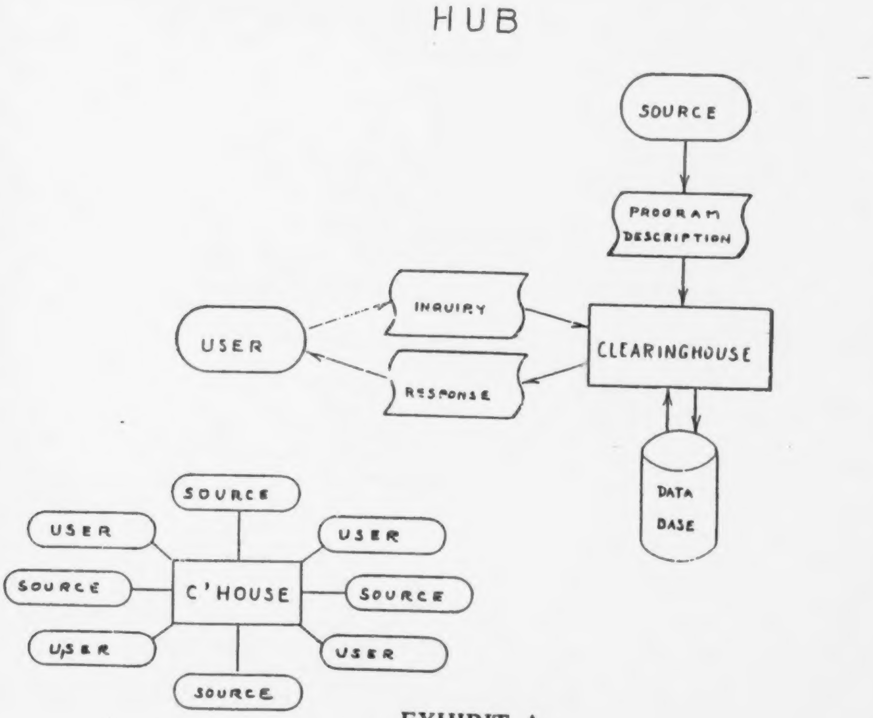

EXHIBIT A

The Clearinghouse also will use a 'pointer' system. See Exhibit B. Under it, the Clearinghouse will identify and locate sources of information, keep a central file of the sources rather than the information itself, and link those seeking information directly to the sources. This type of system is particularly useful for information that has not been reduced to writing, is constantly changing, is more detailed or complex than the central collection can handle economically, or needs interpretation or explanation by the source. This supplemental system also will be used to direct inquirers to services available from the private sector. Substantial program efficiencies can be generated in this way; it will be faster and cheaper, and allow pinpoint targeting.

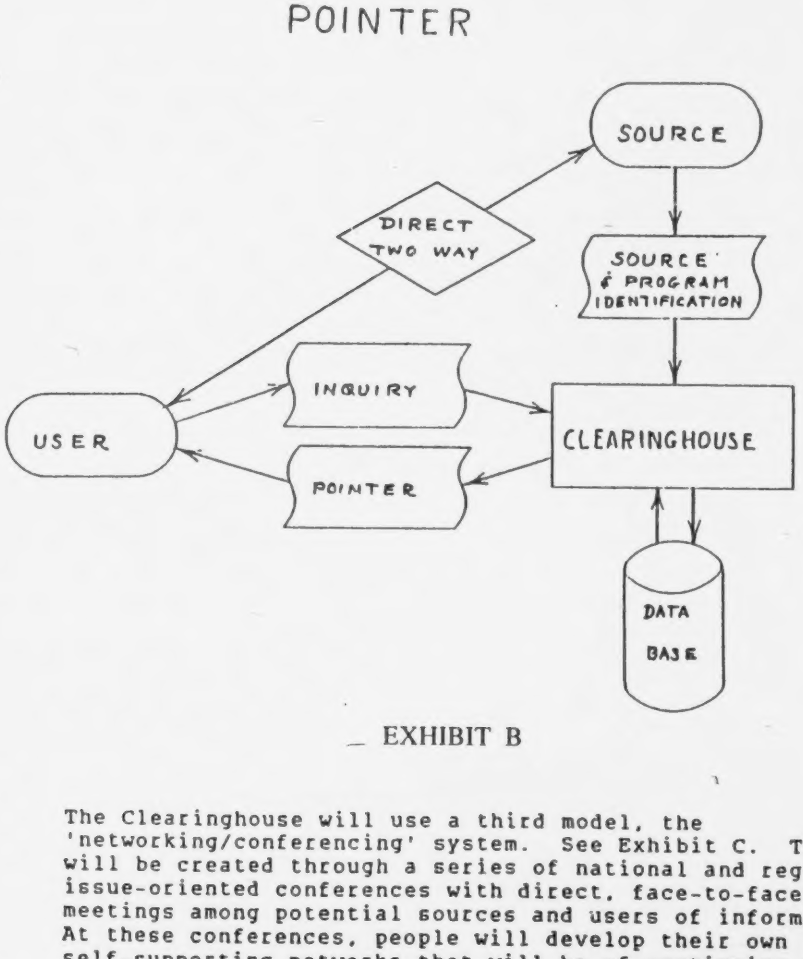

EXHIBIT B

The Clearinghouse will use a third model, the 'networking/conferencing' system. See Exhibit C. This will be created through a series of national and regional issue-oriented conferences with direct, face-to-face meetings among potential sources and users of information. At these conferences, people will develop their own self-supporting networks that will be of continuing value without further Clearinghouse involvement. The conferences will be used also to locate or obtain information for use in creating the 'hub' and 'pointer' systems. Examples of issues that could be covered are risk capital, incubators, and automation training. In this way, the Clearinghouse builds networks by identifying like interests of users and linking them together. These growing networks will be available to the users through a Clearinghouse list of contact points. A key feature of this networking/conferencing system is that it can be started quickly, with minimal investment except for conference arrangements and travel.

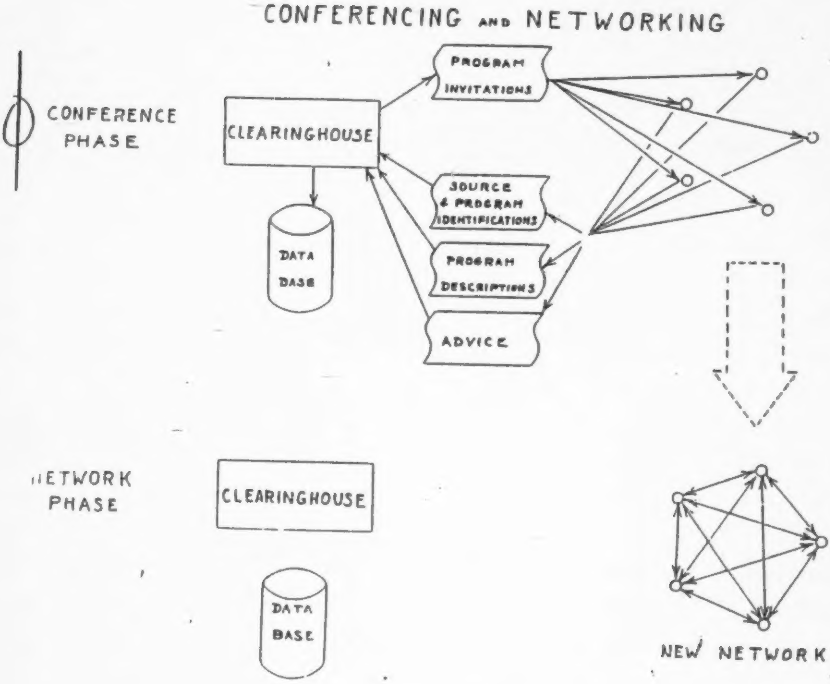
CONFERENCING AND NETWORKING
CONFERENCE PHASE
CLEARINGHOUSE
DATA BASE
PROGRAM INVITATIONS
SOURCE & PROGRAM IDENTIFICATIONS
PROGRAM DESCRIPTIONS
ADVICE
NETWORK PHASE
CLEARINGHOUSE
DATA BASE
NEW NETWORK

EXHIBIT C

Exhibit D shows the Clearinghouse using a composite of all three system models. The Clearinghouse will have in its data base or repository the information needed to operate in the 'hub' and 'pointer' modes. In addition, the Clearinghouse will provide access to the information available from a variety of networks and other data sources--the 'networking/conferencing' mode.

The cluster of boxes called "Commercial Services" on the right side of Exhibit D indicates where the Clearinghouse brings users into contact with private and other cost reimbursable sources of information and services, e.g., the National Technical Information Service. The Clearinghouse may develop agreements to assure that it does not duplicate or encroach upon proprietary services but still aids the user.

THE CLEARINGHOUSE

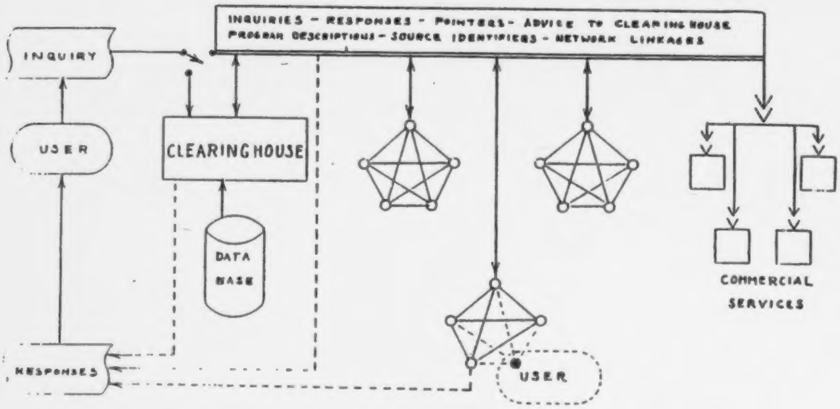
INQUIRIES - RESPONSES - POINTERS - ADVICE TO CLEARINGHOUSE
PROGRAM DESCRIPTIONS - SOURCE IDENTIFIERS - NETWORK LINKAGES
INQUIRY
USER
CLEARINGHOUSE
DATA BASE
RESPONSES
USER
COMMERCIAL SERVICES

EXHIBIT D

4. CLEARINGHOUSE OPERATING PRINCIPLES:

The Clearinghouse's three system models--hub, pointer, and networking/conferencing--are designed so that the following principles of operation will be observed:

CLEARINGHOUSE OPERATING PRINCIPLES

Multiple use of information

Open system--cannot be co-opted or manipulated

Efficiency

- Right the first time
- No bottlenecks
- Minimal burden to sources of information

Self maintaining--its value is an incentive for voluntary replenishment

Provides creative solutions to complex problems and policy issues

Enhances private sector information services rather than competing

5. WAYS THE CLEARINGHOUSE CAN ADD VALUE TO BASIC INFORMATION

If the Clearinghouse is to maximize its potential, it must find ways to add value to the information at its disposal. Examples are:

- To the database files it develops, it must strive for completeness, comparability and differentiation (from like program in one state to like program in another state), accuracy, and client accessibility. And, it must analyze why and how initiatives were used in the context of the original environment.

- As a network builder, it must identify and activate opportunities for linking related interests, induce or assist State and local program experiments, and provide advice to those who request it.
- To help inquirers, it must provide expert interpretation of inquiries in order to make best use of the information available from the Clearinghouse and other sources, and provide responses in convenient and useful formats.
- As it gains experience, it must serve policy makers by providing national pattern detection (e.g. trends toward or against particular types of initiatives), issue clarification, and policy alternatives.

The Clearinghouse will be a Learning System that operates at a minimal maintenance cost. To add to and maintain the currency of its information, it may ask users to provide information on their programs in return for services as a form of barter. The Clearinghouse will provide enough value to information sources in the form of recognition and referrals that there will be an incentive for those sources to keep information on their initiatives current.

The following summary shows the sequence in which the value adding functions will become available to users of the Clearinghouse:

CLEARINGHOUSE VALUE ADDING FUNCTIONS

Building Data Base

Identifying sources of information

Collecting valuable information
- Complete
- Comparable
- Accurate
- Useful for adaptation

Analyzing why and how initiatives were used in the context of their original environment

Organizing information for client accessibility
- Indexing
- Storing

Building Networks

Identifying like interests

Linking like interests

Linking networks

Answering Simple Requests

Helping refine questions

Finding location of response
- Data Base--Response
- Direct Source--Pointer
- Commercial--Referral
- Unknown--Network

Directing new clients to sources

Answering Complex Questions

Helping refine question

Selecting process
- Information search and analysis
- Small meetings and conferences
- Developing tentative answer
- Testing answer
- Delivering answer

Serving Policy Makers

- Clarifying issue
- Locating sources of information
- Collecting information
- Detecting patterns
- Analyzing alternatives
- Informing for consensus

6. DETERMINING USER NEEDS

Views, ideas, and advice on the services the Clearinghouse should provide will be sought from multiple sources. First, the Clearinghouse will gather initial impressions and proposals from potential users and providers of information. These will be analyzed and reduced to preliminary conclusions and decisions. Second, the Clearinghouse will test the conclusions and decisions derived. By these iterations, the Clearinghouse will obtain information to:

- Determine the array of users to be served by the Clearinghouse. The most frequent users are likely to be State and local governments, sub-state and multi-state organizations, Congress, Federal agencies, public interest groups, and trade and professional associations. In addition, individual businesses, individuals, and foreign countries may also be users.
- Determine the specific needs of these users. This will be done during FY 89 concurrently with the setting-up of the collection, filing, and dissemination function; other Clearinghouse information operations; conferences; direct networking; and value adding analysis. For later years this 'needs determination function' will include expanded collection and dissemination, other Clearinghouse information

operations, State/local evaluations, and policy analysis studies.

- o Identify the range of information to be contained in the Clearinghouse files. This involves identifying the types of programs definitely to be included, such as State and local government Incubators, Risk Capital Programs, Engineering Extension Services, and Business Services. It would probably include programs for Vocational Education and Market Aggregation or Business Promotion. A range of additional programs for possible inclusion will be examined, such as Product and Board of Director Liability Limitations, Hazardous Waste Disposal Assistance, Remedial Education, and Prisoner Rehabilitation.

- o Determine the actual availability of information. Some information can be obtained through existing governmental collections such as the National Institute of Standards and Technology survey of about 425 State Technology Extension Services, the Directory of Federal and State Business Assistance updated every two years by NTIS, studies by the Office of Technology Assessment, national surveys by states (e.g., Minnesota), and regional summaries. In addition, there are many private sector sources and collections of information such as directories, studies, and services provided by industrial associations and research organizations. Additional information may have to be obtained directly from individual State and local government program sources.

- o Identify existing private sector collection, dissemination, and publication services that may serve user needs--to avoid duplication by the Clearinghouse.

7. INTEGRATION AND COORDINATION WITH COMMERCE UNITS

The Clearinghouse program must be coordinated with the many other Department of Commerce activities having a major ongoing interest in the kind of State and local activities envisioned by the Clearinghouse. This coordination will begin with those units organizationally related to the Office of Productivity, Technology and Innovation (OPTI), or its successor, that provide information on or work with State and local government initiatives in productivity, technology, or innovation. These include the National Technical Information Service, the Commerce Productivity Center, Metric Programs, Federal Technology Management Office, and Industrial Technology Partnerships. This integration and coordination will expand to include other Commerce units, other Federal Agencies, businesses, and public interest organizations providing information to or working closely with the State and local governments.

For interested Commerce units, OPTI will hold a general meeting where the Clearinghouse's purpose, plans, and functions will be explained. OPTI will explore a Memorandum of Understanding outlining ongoing cooperation between the Clearinghouse and each unit as appropriate.

Those units identified so far within the Department of Commerce are:

Economic Affairs, including the Census Bureau
Economic Development Administration
Intergovernmental Affairs

International Trade Administration
Minority Business Development Agency
National Oceanic and Atmospheric Administration
National Institute for Standards and Technology
National Telecommunications and Information
  Administration
Patent and Trademark Office

In addition, the Clearinghouse will use the external networks that the offices organizationally related to it have developed. For example, there are specific networks in the areas of flexible computer integrated manufacturing, State and local governments, incubators, small business development, science and technology financing including the R&D limited partnership and joint and cooperative R&D ventures, Defense industrial base, training, and management of science, technology, and business coordination and cooperation.

8. CONTINUED COORDINATION WITH OTHER FEDERAL AGENCIES

Many other Federal agencies have a continuing interest in activities envisioned by the Clearinghouse. The Clearinghouse will hold individual meetings with each of these agencies. An informal agreement or Memorandum of Understanding may be developed with each as appropriate .

The agencies identified so far are:

Defense (including certain specific components)
Education
Federal Emergency Management Agency
Federal laboratory Consortium
Labor
National Science Foundation
Office of Science and Technology Policy
Small Business Administration

9. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The work of the Clearinghouse is closely related to the mission of the Advisory Commission on Intergovernmental Relations (ACIR). Under a FY 88 interagency agreement, ACIR will sample existing compilations of State and local initiatives such as the NIST compilation, sample information available from other sources, develop an index for accessing the information, and develop an inventory system with an initial data base for the Clearinghouse. ACIR preparatory activity will include holding joint supplier/user 'think sessions'. The ACIR will make recommendations on the content and file arrangement of material such as directories and catalogs which will not be entered into a computer file but that is needed to support and enhance the collection.

Also, under the agreement, the Clearinghouse and ACIR will work through a cooperative relationship rather than the arm's length relationship common to procurement contracts.

10. COORDINATION WITH OTHER INTERESTS

There are many organizations outside of the Federal government that have extensive interests in the Clearinghouse program. All of these organizations cannot be identified specifically until more preliminary planning is completed. In most cases, the Clearinghouse relationship with these organizations will not be contractual.

A brief example of organizations that have extensive interests in the Clearinghouse program are:

American Productivity Center
Education Associations, like the American
  Association of Junior and Community Colleges
National Academy of Engineering
National Governors Association
Various industry associations like the
  National Machine Tooling and Manufacturing
  Association

11. PUBLIC RELATIONS

There will be two public relation phases. The initial one will inform Congressional staffs and other Commerce units and will obtain suggestions from potential users and sources of the Clearinghouse information. In addition to the Clearinghouse/ACIR "think sessions", the initial phase may include a Federal Register notice and other invitations for ideas. The first phase must not stimulate substantive inquiries from State and local governments. However, as the Clearinghouse begins to provide its services, the second phase will be a widespread announcement of services available from the Clearinghouse.

12. ORGANIZATION AND OPERATIONS

The Clearinghouse will be a key unit in the new office of the Under Secretary for Technology Administration in the Department of Commerce. In order to start off rapidly in FY 89, OPTI has already provided the Clearinghouse with some staff for planning, coordination, needs development, and initial operations. This includes the services of:

Director
Senior Technology/Economics Specialist
Senior Information Specialist
Technology Program Analyst
Clerical support

These services provide the Clearinghouse with relevant experience and expertise, already in place in OPTI, in areas of productivity, technology and innovation, including OPTI's extensive networks with State, local and Federal governments.

During FY 89, the Clearinghouse may use its appropriated $250K as follows:

- Two additional staff:
  - An inquiry-response specialist ~~who will~~ respond to requests for information. This person will have to be employed soon to become familiar with the operational process and substance as it develops.
  - An administrative assistant to handle the large number of administrative details such as plan and budget development and justification, workshop liaison, personnel actions, travel, and procurement documentation. Initially, meeting externally

imposed administrative requirements will absorb a significant amount of Clearinghouse staff time.

- Conferences to be run by contractors. Regional conferences will be held outside of Washington, DC and will draw on people from all parts of the country. They will be first steps in developing the conferencing/networking system described in Section 3.

  Examples are:

  - A regional conference, perhaps sponsored jointly by the Appalachian Regional Commission, that concentrates on State and local programs for areas that lack a strong industrial base.
  - A regional conference, perhaps sponsored jointly by a group of North-Central States on programs for areas with declining industries.
  - A regional conference, perhaps sponsored jointly with one or more organizations such as the Electronics Industry Association, on programs for areas with concentrations of high-tech industries.
  - A national conference, perhaps sponsored jointly by the Clearinghouse, Office of Intergovernmental Affairs, and the Department of Justice on cooperation vs. competition by State and local governments in economic development programs.
  - A national conference, perhaps sponsored jointly by the Small Business Administration and the Department of Defense, that concentrates on small firms which supply large defense contractors.

- The ACIR may be asked to perform various analysis tasks using the data collected by the Clearinghouse. One such analysis could be a complete array of all the types of programs that a State or local government might run, accompanied by an indication of the number of governments actually running each type.

- The Clearinghouse will need to print and distribute a Federal Register notice, one or more brochures, and other media vehicles such as video tapes.

- To respond quickly and accurately to requests for information, the Clearinghouse's information processing needs will be evaluated and equipment ordered for data systems, file storage, retrieval, copying, and mailing.

- There must be adequate funds for Clearinghouse staff travel and for travel expenses of those who will be speakers at conferences.

- To keep travel expenses to a minimum, equipment will be obtained to allow teleconferencing and electronic mail communications with organizations around the country.

13. EVALUATION OF CLEARINGHOUSE OPERATIONS AND EFFECTIVENESS

To avoid a problem that hampers most new Government programs, evaluation techniques and criteria will be developed in conjunction with the start of each major activity or operating element. These will be used for future programming, budgeting, and overall evaluation of the Clearinghouse.

14. REPORTS TO CONGRESS

The Act requires the first report to Congress before January 1, 1989. This requirement anticipated that the Act would take effect early in 1988. As it has turned out, little can be accomplished by the required date except for arranging the ACIR agreement and for initial planning. The Clearinghouse will submit a status report to meet the letter of the requirement, and in it, commit to prepare an additional and non-required report by January 31, 1990 for calendar year 1989. This second report is within the spirit of the law, will show good intentions, and will be a more complete progress report under the new Administration. The next regular report is required before January 1, 1992, although policy recommendations may be developed before then.

15. MEMORANDA OF UNDERSTANDING

This plan may be expanded through Memoranda of Understanding with DOC components and other Federal agencies. This section will include those agreements when they are signed.

Jack Williams, Ph.D.
Director, Office of Productivity,
Technology, and Innovation
Date:

EXECUTIVE SUMMARY OF THE STRATEGIC PLAN of the CLEARINGHOUSE FOR STATE AND LOCAL INITIATIVES ON PRODUCTIVITY, TECHNOLOGY, AND INNOVATION

Recognizing that a wide variety of initiatives has been taken by State and local governments to promote productivity, technology, and innovation in their own jurisdictions, the Congress decided to establish a Clearinghouse so that information about these initiatives can be shared. The Omnibus Trade and Competitiveness Act of 1988 established the Clearinghouse for State and Local Initiatives on Productivity, Technology and Innovation in the Office of Productivity, Technology, and Innovation (OPTI) of the U.S. Department of Commerce.

The Act requires the Clearinghouse to become a central repository for such information and to report periodically to Congress. In addition, the Act allows the Clearinghouse to undertake a wide variety of actions, including establishing relationships with State and local governments; collecting and disseminating information (through reports, directories, handbooks, conferences and seminars); providing technical assistance; making recommendations to all levels of government; and performing studies.

While it is clear that Congress intended a great deal of information to flow directly through the Clearinghouse, there will be many times when more efficient communication can occur if those seeking answers to questions can be put in direct contact with those who may have the answer. For this reason, the Clearinghouse is being organized as an information system, rather than simply a repository or a library. This information system not only will take advantage of all available collections of information about State and local government programs, it also will take advantage of existing networks of experts and seek to build new networks. The Clearinghouse will provide quick and accurate information to those who need it, with the least possible burden to those who are asked to supply it. The system will be designed with the active participation of those whom it serves in a way that assures openness and currency, but prevents manipulation. By these actions, the Clearinghouse will increase the utility and value of the information for users that may include Congress, other Federal agencies, and the private sector as well as State and local governments.

The Clearinghouse will identify and take advantage of the numerous collections already available. This includes the survey of State Technology Extension Services by the National Institute of Standards and Technology, The Directory of Federal and State Business Assistance updated every two years by the National Technical Information Service, and similar compilations from a variety of other sources. An interagency agreement has been signed with the Advisory Commission on Intergovernmental Relations(ACIR). Under the agreement, the ACIR will sample existing compilations of State and local initiatives such as the NIST compilation, sample information available from other sources, develop an index for accessing the information, and develop an inventory system with an initial data base for use by the Clearinghouse.

During FY 89, the Clearinghouse will use extensive coordination as it develops the Clearinghouse's services to assure that the interests of other Commerce units, other Federal agencies, the State and local governments, and the Congress are met effectively. A series of conferences will be held to aid the Clearinghouse's development and to build networks.

OPTI has assigned a director and initial staff to organize and implement the Clearinghouse plan, and to identify additional needed resources such as staff, facilities, equipment, printing and publications, conferences, and service contracts.

The Act requires the Secretary to report to Congress before January 1, 1989 and every three years thereafter. The first required report will present the plan and progress made toward developing and implementing the Clearinghouse. In this first report, the Secretary will commit to an additional report on the Clearinghouse during its first full year of operation in 1989.

QUESTION:

The Department's budget zero-funds the Public Telecommunications Facilities Planning and Construction Program (part of the National Telecommunications and Information Administration), after a $20 million FY89 appropriation last year. We fight this battle year after year. In many rural states such as Arkansas, the only outside contact some of my citizens have is the news they get from TV and radio stations. Don't you think, if George Bush really wants to be the "education President," that he can't leave rural American behind? Don't you think that access to information is a critical link to education? If so, explain this decision.

ANSWER:

The Administration agrees that access to information -- including information derived from broadcasting sources -- is indeed a critical link to education. With reference to the Public Telecommunications Facilities Program (PTFP), however, the Administration's view is that the overwhelming majority of the U.S. population has ready and reliable access to information from public television and public radio. Additionally, the Administration believes that it is not the role of the Federal Government to finance the replacement of obsolete or worn-out equipment.

In response to a Congressional directive, the National Telecommunications and Information Administration (NTIA) recently completed an extensive state-by-state survey of the coverage of public radio and public television stations. The survey revealed that approximately 94 percent of the U.S. population is able to receive a reliable public television signal over the air. This coverage percentage could increase if other factors, such as the presence of public television offerings on cable television systems were considered. Another factor, one especially relevant to public television reception in rural areas, is the proliferation of home satellite dish antennas; the Congress recently recognized the significance of these "backyard" dish antennas by mandating that the Public Broadcasting System provide one transponder of its programming in a format easily received via home dish antennas. These signals are beyond the normal signal contours used by NTIA in its survey.

The coverage percentage of public radio is equally impressive. The NTIA survey concluded that approximately 86 percent of the U.S. population receives at least one reliable public radio signal. Again, this coverage percentage could increase somewhat by including the unknown number of residents in "electronically quiet" rural areas who receive strong radio signals beyond the normal contours of reliable radio service and the equally unknown number of rural residents who have constructed power radio receive antennas.

With substantial Federal deficits and the need to fund so many critical programs, the Administration believes that the objective of the PTFP to assist in providing public radio and public television coverage to the majority of the U.S. population has clearly been met and that the program should therefore be terminated.

QUESTION SUBMITTED BY SENATOR JIM SASSER

QUESTION:

In early March I wrote to you regarding the pending proposal to open a Commerce Department branch office in Knoxville, Tennessee. The Tennessee office of the U.S. Department of Commerce ranks eighth in the nation counseling on export licensing questions, and 80 percent of that counseling load originates in the Knoxville high tech corridor area. As you know, an agreement has been reached between the Knoxville Chamber of Commerce and the Tennessee District Office of the Department of Commerce to house the proposed branch rent free. Mr. Secretary, as I stated in the March 9 letter to you, I would appreciate your expediting approval of the opening of this facility at the earliest possible date.

ANSWER:

A decision was made last summer by Secretary Verity to study the need for export administration field offices. Knoxville is not being included in the study due to the historically small volume of export license applications emanating from that area. We intend to let ITA district offices continue to provide export licensing assistance to the Knoxville area.

Because of budget constraints, we have been hesitant to commit our limited resources to new facilities until we are certain of being able to cover existing responsibilities. We are eager to provide improved export promotion services and export licensing assistance wherever we can, but are reluctant to create any additional offices until our new leadership in the International Trade Administration has had the opportunity to review this issue.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

Economic Development Administration

QUESTION:

The FY 1990 President's budget again proposes to phase out the Economic Development Administration (EDA) assistance programs for which the Congress provided $182 million in FY 1989. I am advised that for the State of West Virginia, an amount of $5,438,302 was obligated for thirty projects. These projects are very important for the economic recovery of states such as West Virginia. Two such projects, which received special support in the FY 1989 bill were projects affecting Marshall University in Huntington, West Virginia ($200,000) for the Marshall University Flexible Manufacturing Proposal, and Wheeling Jesuit College in Wheeling, West Virginia ($200,000 for planning and technical assistance activities for establishing a Software Development Center).

Please provide for the record a status report on these two projects, including significant milestone events leading to the award of the projects in compliance with the expressed intent of Congress as articulated in the joint explanatory statement of the Committee of Conference on the FY 1989 Commerce, Justice, State Appropriations bill (p. 9, House Report 100-979).

ANSWER:

These projects, Marshall University and Wheeling Jesuit College, are on hold until the House and Senate Appropriations Committees send letters to the Secretary of Commerce, pursuant to the FY 1989 Appropriations bill, interposing no objection to the commencement of these projects.

The Appropriation bill directed the Secretary to submit a report to the Appropriations Committees concerning the details and evaluation of these projects. A report has been prepared based on evaluations of each project done by both EDA and the Office of Inspector General, and has been submitted to the House and Senate Committees on Appropriations as required by the bill.

The Department has determined that both projects are substantively in compliance with PWEDA and EDA's regulations implementing the Act, but they have problems as proposed and substantially exceed grant amounts normally awarded for Technical Assistance. The Department would prefer that each proposal be revised and resubmitted for funding in accordance with EDA's normal competitive selection process.

For your information, the total FY 1989 Local Technical Assistance allocation to the Philadelphia Region, of which West Virginia is a part, is $270,000. Normally, this Region limits its participation in Local Technical Assistance grants to $25,000. Approval of these projects will exhaust the entire Local Technical Assistance allocation and deny all other states in the Philadelphia Region any opportunity for funding under this program in FY 1989. The Philadelphia region consists of 13 northeastern states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico.

In addition, Marshall University was awarded $200,000 from National Institute of Standards and Technology (NIST) for "development of a strategic implementation plan for a Factory of the Future and an Institute for Flexible Manufacturing." This was a mandated project in the Navy Department's budget which stated the award was to be made to "a university." NIST was to do the award and Marshall University was the only applicant.

QUESTION:

The FY 1989 Commerce, Justice, State Appropriations bill provided $200,000 for a grant to Wheeling Jesuit College, West Virginia for planning and technical assistance activities for establishment of a Software Development Center. Wheeling Jesuit College is the site of the proposed Software Development/Challenger Space Center. The NASA Challenger Space Center will develop software for the other Challenger Space Centers throughout the United States. In addition, Wheeling Jesuit College proposes an Academy for Small Business Management as means of providing management skills training to the region's small business operators.

The combined Software Development Center, a Challenger Space Center, and an Academy for Small Business Management will be housed in one structure and will serve to carry on the following activities: provide a complete working environment for software developers to encourage the birth and growth of software firms in our area; provide the software packages required by the Challenger Space Centers in accord with the objective and visions of the Challenger Space Center programs, endorsed by Congress and NASA; provide facilities in which small business managers can learn the computer-related skills for the improvement of their businesses; provide properly laid out and equipped facilities for software and computer-related meetings, conferences and seminars that will encourage the growth of software-related companies in this area; provide a destination for school field trips, and offer computer utilization training to school teachers; and operate computer camps and a computer club for school-age students.

I am advised that the project's sponsor expects that the proposed project would create 1,034 new short-term and permanent jobs, infuse an additional $5 million annually to the economy, strengthen the small business sector of the area, improve the region's educational resources, and enhance the Wheeling area's tourist trade. These much needed new jobs in an area with unemployment above the national average would result in a $4,835 federal investment per job created.

The physical building required would be a new structure to accommodate the high technology. The building is now estimated at 40,000 square feet at a cost of $3.5 to $5 million.

Additional equipment beyond that amount will be sought from firms involved in computer and computer-related activities, firms that are associated with NASA, and private individuals.

It is worth noting that NASA announced on March 23, 1989, that Wheeling Jesuit College will be the site for the proposed $38 million National Technology Transfer Center, which will be a single source for located federally sponsored research that is applicable to specific business, industry, and government needs. The National Technology Transfer Center's promity to the Software Development Center would put two leading edge facilities with similar and complementary goals within walking distance of each other.

What are your views on the establishment and construction of such a Center?

ANSWER:

The establishment and construction of the facility should be done only if appropriate funding is available for the facility and only after an adequate feasibility study is completed that indicates the practicality of the project. Also, as stated in the report to the Appropriations Committees which was required by the Department's FY89 Appropriation Act, the Department feels that the funding for this project mandated in the Economic Development Administration's Appropriation is inappropriate and should not be approved as submitted. All projects should compete with other applications to ensure that highest priority projects are funded.

International Trade Administration Coal Exports

QUESTION:

Last year, at my request, the Committee included language in the report accompanying the FY 1989 Commerce, Justice, State Appropriation bill, expressing its concern that the United States may be disadvantaged in the international marketplace, as a result of practices in other nations, mainly involving subsidies. The Committee requested that "ITA continue its investigation of the use and existence of such subsidies and/or incentives, both direct and indirect, and report its findings to Congress within 180 days of the enactment of the accompanying bill."

What is the status of this report and when can the Committee expect to receive it? For the record, please provide a summary of the report's findings.

ANSWER:

After overcoming such difficulties as finding accurate and complete information on the many types of financial aids and other incentives given by foreign governments to their indigenous coal industries, we have been able to identify the most important financial aids and incentives through our survey of 22 countries, which represent approximately 98% of the hard-coal world production in coal. The most substantial financial aids and incentives appear to be those being given by the five EC producers (Belgium, Germany, France, Spain and the U.K.), and Japan. The financial aids and incentives include operating grants, investment aids, import quotas, tariffs, and non-tariff barriers that restrict markets. This is a difficult study in that there is little transparency to much of the assistance provided by foreign governments. We expect to have the final report completed by the end of June 1989.

Charleston, West Virginia Office

QUESTION:

Last year, at my request, the Committee included language in the report accompanying the FY 1989 Commerce, Justice, State Appropriations bill, directing that the Charleston, West Virginia office remain in operation at current levels. May I have your assurances that this office will remain open at current levels? Please provide for the record for the years 1988, 1989, and projected 1990, the staffing and funding levels of the office.

ANSWER:

The table below shows the staffing and funding for the Charleston, West Virginia US&FCS district office for the period requested. There are no plans currently underway to close district offices.

	Actual FY 1988	Projected FY 1989	Projected FY 1990
Staff	4	4	4
Sal/Ben./Program Funding	$162,372	$166,165	$170,339

National Telecommunications and Information Administration Public

Telecommunication Facility Grants

QUESTION:

It is my understanding that the Public Television Facility Construction Grant Program is again being proposed for elimination in the FY 1990 President's budget. The appropriation for this program is $20 million in FY 1989. I understand that the Commerce Department's National Telecommunications and Information Administration has under consideration applications from both the Beckley ($268,000) and the Huntington ($461,000) components of the West Virginia Educational Broadcasting Authority and a third application from the West Virginia Library Society ($10,000) in Charleston.

What can you tell me about the status of these projects? May I please have your assurances that you will keep me fully informed regarding the status of these projects?

ANSWER:

The three applicants mentioned applied January 11, 1989 and were all accepted for filing on 3/30/89. They are currently being reviewed--along with the other applications--by the Public Telecommunications Facilities Program (PTFP) Officers, engineers, an Advisory Panel consisting of private sector communications experts and NTIA reviewers (NTIA employees outside of the PTFP). Congressmen and Senators will receive a list of awards for their states (or districts) before they are officially presented to the grantees. This notification is handled by the NTIA Office of Congressional Affairs.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Export Administration Offices

QUESTION:

I have an interest in the establishment of export administration offices in Portland, Oregon, and the Boston/Nashua area. In the Senate Report on the Commerce Appropriations Bill, as well as in the Conference Report, Congress provided $775,000 for these offices and directed that they be opened during the current fiscal year. Your predecessor decided not to follow Congressional intent and instead commissioned a study on the delivery of export assistance services. The first contractor for this study was fired and has submitted a bill for $37,000; the second contractor is charging $197,000. Will these funds come from the $775,000 provided for the establishment of the two offices?

ANSWER:

The funding for the field office studies will not come from the $775,000 appropriated for Boston/Nashua and Portland offices.

QUESTION:

I can assure you that I don't need a study to know that Nashua and the area between Nashua and Boston is the center of the high technology industry in the East. All these companies depend heavily on exports in order to survive, and due to the nature of their products they need export licenses. The pilot export assistance office in Los Angeles has been a boon to such exporters; indeed, I am told that the office regularly receives calls from New England seeking assistance and information. Can I assume that once the study has been received by the Commerce Department, you will take immediate steps to open the two export assistance offices pursuant to Congressional intent?

ANSWER:

Upon completion of the study the Department will take the appropriate steps consistent with the study's findings, to address the need for export administration services in Portland and Boston/Nashua.

USTTA

QUESTION:

The Department is proposing to finance the 1990 budget request of $13.3 million for the U.S. Travel and Tourism Administration by imposing user fees. Although the budget justification states there is "Congressional action pending" on this issue, no legislation has been submitted.

What form would this user fee take?

ANSWER:

The Department supports the fee and is preparing legislation for submission to Congress. The proposal would assess a fee on the airline and cruise ship industries — the primary beneficiaries of USTTA programs.

QUESTION:

If the proposal is to assess a $1 fee on each international airline ticket, the user fee would raise twice the amount proposed for the USTTA budget. What would happen to the remainder of the funds?

ANSWER:

The proposal is to assess a fee on the airline and cruise ship industries. The level of fees is based on the volume of inbound air and cruise ship passengers.

While USTTA projects an estimated income of $21,700,000 for the fiscal year based on anticipated arrivals, it also recognizes that in the first year there may be some delays and other events which cause the actual income derived from the fee to fall short of the target. Thus, as prudent fiscal managers, the Administration has proposed a modest budget of $13,298,000.

Whatever remainder there may be in the fund authorized in the fee legislation will be held for USTTA's exclusive use with concurrence of Congress. Under the proposal the Secretary of Commerce shall suspend fee collections if the reserve in the fund exceeds twice the then current appropriation for the agency.

QUESTION:

Tourism is not the only industry the Commerce Department attempts to promote and assist in the international economy, but it is now the largest exporting industry in the nation. Does the Department assess user fees on other industries it attempts to assist through the International Trade Administration?

ANSWER:

The Administration changes user fees for information products it provides to many of the industries it attempts to assist. These information products are specially generated for industries that request them and the fee charged is used to defray the cost to the government of gathering and distributing the information.

QUESTION:

Are they any different from the tourism industry?

ANSWER:

No.

North Pacific Cable and Simplex

QUESTION:

Mr. Secretary, in 1987 Pacific Telecom Cable, Inc. was granted a conditional license by the Federal Communications Commission to land and operate a fiber optic cable connecting Japan with Alaska and the West Coast of the United States. The FCC granted the license on an interim basis, with the proviso that final authorization would not be given until the applicant had demonstrated that American companies would be given a reasonable opportunity to participate in the planning, manufacture, installation, operation, and maintenance of the proposed cable.

Simplex Wire and Cable Company of New Hampshire was the only American company to bid to supply the fiber optic cable for the

North Pacific Cable project, as it is called. Simplex has already manufactured the cable for the Pacific Link cable which began operations this week and provides common carrier telecommunications service between the United States and the Far East.

The North Pacific Cable project is controlled by a joint British-Japanese consortium, and it is not surprising that a joint British-Japanese venture of Standard Telephone Company and Nippon Electric Company won the cable contract. Originally this consortium had planned on manufacturing the cable in the United States, but now it appears the cable will be manufactured in Great Britain. In addition, we have received information that the cable design may have been changed and the price of the cable is being increased above the bid level.

Last week the Federal Communications Commission issued a notice for comment on the application of Pacific Telecom for a permanent landing license. The FCC must decide whether the owners of the North Pacific Cable project attempted to include American companies in the manufacture of the cable. The Commerce Department, through the National Telecommunications and Information Administration, has the opportunity to comment formally on this proposal. Given the trade implications of this deal, will the Department review the application of Pacific Telecom and file comments with the FCC?

ANSWER:

The National Telecommunications and Information Administration (NTIA) is concerned about unfair trade practices, including those which could injure the U.S. submarine cable industry. In the case of the complaint of Simplex Wire and Cable alleging unfair treatment in the bidding for the North Pacific Cable (NPC), there are several NTIA actions. These include filing comments with the FCC, making recommendations to the Department of State (which has final authority over the granting of landing licenses), and others. However, the most important step necessary is that Simplex file with the FCC. NTIA could also file with the FCC, if Simplex were to come forward with the details of its complaint but this is not the only option. NTIA works closely with the Department of State, which has final authority over the award of submarine cable licenses, and could make recommendations at this level. The Department of State would be unlikely to grant final approval if problems such as a formal Simplex complaint were not first resolved.

Simplex mentioned their concerns about this matter to the NTIA Office of International Affairs in a discussion on April 20th but indicated that they were still documenting certain aspects and had not decided whether to actually file. Presumably, a decision will be forthcoming from Simplex shortly, so that this issue may be resolved.

QUESTIONS SUBMITTED BY SENATOR ROBERT W. KASTEN

QUESTION:

What is your progress in filling any of the important Assistant Secretary and other positions at Commerce?

ANSWER:

The status of nominations is:

Confirmed:	Date confirmed
Robert Mosbacher, Secretary of Commerce	1/31
Wendell Wilkie, General Counsel	4/19
Eric Garfinkel, Asst. Secretary for Import Admin.	5/10
Thomas J. Collamore, Asst. Sec. for Administration	5/17
Michael R. Darby, Under Sec. for Economic Affairs	5/17

Pending:	Date sent
Susan Schwab, Director Gerneral USFCS	4/4
Michael P. Skarzynski, Asst. Sec., Trade Dev.	5/1
J. Michael Farren, Under Sec. for Inter. Trade	5/16

Pending clearance by the FBI, nominations for the Director of Census, Assistant Secretary for Technology Administration, and Assistant Secretary for Economic Development Administration have been determined. Hopefully, an announcement will be made in the next few weeks. NIST has narrowed its list of potential candidates for the Director's position. A decision on the Under Secretary for Technology Administration is imminent.

QUESTION:

One of the stated roles of the Department of Commerce is the monitoring and promotion of U.S. trade overseas. I know we both share the sense of importance of that role of the Department. However, the Department has to reconcile that role with the fundamental principle that government should not directly engage in business, particularly if there are qualified parties in the private sector. In other words, encouraging commerce without engaging in it.

Do you agree that the Department should not use its promotion-of-commerce authority to engage in business ventures indirect competition with U.S. private industry? (Department operated booths at the Paris Air Show that competed with private booths.)

ANSWER:

I would generally agree that the Department should not use its promotion-of-commerce authority to engage in business ventures in direct competition with U.S. private industry. There are, however, instances where some flexibility must be shown. One of these instances is the example you cited, the Paris Air Show.

The Paris Air Show is such an important event for the aerospace industry that we at the Department of Commerce have determined it is necessary to have a U.S. government presence. We have been supported in this decision by the aerospace industry which feels a U.S. Government involvement improves the reception they receive from key foreign buyers. The result is the U.S.A. National Pavilion at the Paris Air Show. The U.S.A. Pavilion provides space for smaller firms in particular. Other U.S. firms exhibit in privately operated booths and some have their own pavilions. Regardless of where they have their exhibits, we provide assistance to any U.S. firm.

QUESTION:

What steps would you consider undertaking to ensure that the agency does not edge its way into business-like activities, particularly where there is an existing, competitive private sector? It seems this would save agency personnel for providing services the private sector does not perform.

ANSWER:

The Department and its various segments do not generally participate in business-like activities, particularly where the private sector is active. The Departmental and OMB budget review processes actively remove activities which could take on a business-like appearance. However, as we previously stated, there are a select number of cases where Department involvement is warranted. We will continue to take all needed precautions to avoid these business-like activities to the full extent possible and we will continue to concentrate on providing services the private sector does not perform.

International Trade Administration

QUESTION:

I note that ITA is looking for an additional $7 million and an increase of some 22 positions. However, I note that the U.S. and Foreign Commercial Service, though receiving a proposed $6 million increase is not looking to expand in the number of positions beyond the current 1,286.

Isn't it true that the current level for US&FCS is 50 positions below the authorized level?

ANSWER:

In recent years, the U.S. and Foreign Commercial Service (US&FCS) has had insufficient funding (due to fluctuations in the value of the dollar and overseas inflation) to fill its vacant positions. It is currently operating at 21 FTE below its authorized level. The $6 million budget increase would permit the US&FCS to fill 15 vacant commercial officer positions. The additional six FTE should remain available in the event that exchange rates become more favorable and permit the filling of all authorized FTE.

QUESTION:

Is this an area that you will be reviewing to be sure that within ITA that the US&FCS is receiving all of the resources, within the constraints we all recognize, that will allow it to fulfill its export assistance to American business?

ANSWER:

We are continually monitoring each of the offices within ITA to assure that, within the obvious fiscal constraints, sufficient funds are made available to those areas most in need. If conditions warrant future requests for additional positions or funding, those requests will be forthcoming.

QUESTION:

Are you satisfied with the voice that the Department has in pursuing the foreign trade policy within the Administration?

ANSWER:

I am very satisfied with the position the Department of Commerce has within the Administration in determining foreign trade policy. Clearly, ours is not the only voice in the Administration, but there needs to be a variety of voices to assure that all aspects of foreign trade are fully understood and analyzed. Foreign trade policy decisions have not been made without the Department of Commerce voice being clearly heard.

ADDITIONAL STATEMENTS

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received additional statements with regard to the requests of the Bureau of the Census from the Society of American Florists and the Indian and Native American Employment and Training Coalition; as well as a statement with regard to the request of the National Telecommunications and Information Administration from the president of National Public Radio.

By direction of the chairman, the statements have been printed in the hearing record.]

[The statements follow:]

STATEMENT OF THE SOCIETY OF AMERICAN FLORISTS

Mr. Chairman, thank you for the opportunity to present the views of the Society of American Florists as you consider the budget for the United States Bureau of the Census. My name is Donald E. Hook, I am a rose grower from Pittsburgh, Pennsylvania, and I am currently serving as the President of the Society of American Florists (SAF). SAF is the only national trade association that represents the entire floral industry. The Society has approximately 10,000 members, including growers, wholesalers, retailers and the allied trades. With its associate and affiliate memberships, SAF represents over 22,000 businesses nationwide.

The floral industry, as with most agricultural industries, relies on the accurate gathering of statistical data. This data provides information that assists in the effective development of market strategies, planting decisions, and measuring the level of domestic to imported product levels, as well as providing the consumer with an accurate measure of product availability and average prices. The floral industry relies on the Census of Horticulture Specialties Report which provides for the gathering, compilation, and publication of horticultural data. The Horticultural Specialties Report is unique and cannot be duplicated by private sources. This report is the only comprehensive report on actual production of United States horticulture available. It provides unbiased statistics which are vital to the government, our industry, and helps the consumer by encouraging industry wide production and marketing efficiencies.

The floral industry is concerned that, while the Census Bureau has been provided the funds through previous appropriations to proceed with the collection of data, budget restraints could prevent the compilation and publication of this vital data. The

Horticultural Specialties Report has been a part of the Agricultural Census every ten years since 1950. A report has not been compiled and published since 1978. The 1989 census will report data on 1988 production. While previous census's have been mandatory, the Census Bureau, as a result of an Office of Management and Budget decision, proceeded with a voluntary reporting requirement. This voluntary requirement will likely diminish the results of the census, however this information still remains vital to the industry. To prevent the full publication of this data would be a waste of federal government funding and would create a detriment to the floral and horticultural specialty crop industries.

Statisticians at the Census Bureau possess knowledge and years of specialized expertise that exist nowhere else. The census statisticians break the information down into categories of horticulture specialties by region and states. This information enables industry analysts to make industry comparisons and predict industry trends. Accurate and complete production figures can only be generated by the Horticultural Specialties Report. If adequate funding for the compilation and publication of this information is not provided, the data will benefit no one and will have been a waste of taxpayers dollars.

Several years ago the funding for USDA's Floriculture Crops Report was cut and the resulting lack of available industry data created great uncertainty in the industry. The industry worked closely with the Congress and USDA in making them understand the importance of this data. The funds were subsequently restored and the importance of them recognized so that the crops report has not been cut again, even with the Gramm-Rudman-Hollings deficit reductions achieved during the last two years. Congress should now realize how vitally important this data is to the floral industry. It would be disheartening to this industry to find that after several years of appropriations the final funding necessary to compile and publish the Census on Horticultural Specialties Crop data would not be provided.

Congress and the Federal Government has already expended close to $1.3 million on this census, an additional approximately $300-400 thousand are necessary to complete this census project.

The data collected benefits the entire industry and public, as well as, the federal government. The Environmental Protection Agency utilizes the data in developing impact statements for new restrictions being placed on widely used pesticides. The Animal and Plant Health Inspection Service, USDA, uses the data in determining potential effects of a reduced quarantine restriction as it might relate to the introduction of foreign pest or disease. The U. S. International Trade Commission uses it in determining the impact of applicable imported product during investigations. Thus the information is used in numerous ways vital to both the industry and the government.

With out the Census on Horticultural Specialties Report the floral industry cannot effectively estimate the extent of its growth or decline. In 1970 the horticultural industry was a $200 million industry, in 1979 the industry had grown to approximately $500 million, and today it is estimated to have a farm-gate value of $2 - 2.3 billion. The retail value of the industry is approximately $10 billion and the wholesale value is estimated at about $4.8 billion.

The floriculture industry is a dynamic and growth oriented industry and as such it is imperative to have as accurate statistics as possible. Floriculture production is one of the most cost intensive investments of any form of agriculture. Greenhouse costs can begin at approximately $175,000 per acre and can cost as much as $800,000. Types of equipment and greenhouses vary according to the crop that is to be produced and prudent growers make decisions based on these factors. Production statistics aid producers in making these decisions.

Growers must be able to ascertain where there is room for growth and what the competitive balance is in a particular area. The Grower must be able to evaluate which crops will and will not be in demand. Retailers and wholesalers must be able to plan market strategies knowing which crops will be available and thus make informed judgments regarding expected prices. Only through the use of appropriate statistics can the businesses in the industry expend their efforts and resources effectively and with relative confidence in projecting cost/profit margins.

Floriculture, like other food and fibre agricultural commodities must have government statistical reports available to them as a matter of law. The floriculture industry is an important and thriving segment of agriculture and deserves accurate and regular census reporting. The floriculture industry is also uniquely situated to be easily converted to a food source agricultural base in an emergency, particularly with the expansive greenhouse availability. To assure that this industry continues to thrive and exist, the accurate collection, analysis, compilation, and publication of data must continue. In the future the Census on Horticultural Specialties Crop Report should once again be mandatory, as is the case with other agriculture census.

The Census Bureau's Horticultural Specialties Report is a legitimate, and worthwhile government program. Funds expended on the report would have a significant rate of return to the federal government as a result of increased industry profitability. The Society of American Florists on behalf of its members and the entire floral industry urges the Subcommittee to appropriate the necessary funding to complete the 1989 Census on Horticultural Specialties Crop Report.

Thank you.

STATEMENT OF THE INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING COALITION

The 1990 Census will be a major event in Indian Country. It will be the first time in ten years that the federal government, with unique constitutional and treaty obligations to American Indians, makes a serious, systematic effort to find out what is happening to Indian people and Indian communities.

For Indian job training programs, the 1990 Census has a special significance. Every dollar available to Indian tribal governments and organizations under the Job Training Partnership Act (JTPA) is allocated on the basis of information taken from the decennial Census of Population.

Indian groups strongly support the efforts which the Census Bureau has made to insure a complete and accurate count of the American Indian population in the 1990 Census. We urge the Committee to continue funding for these activities in the Fiscal Year 1990 appropriations bill covering Bureau operations, including:

1. The use of Indian people in managerial, technical and line staff positions in both headquarters and field units of the Bureau of the Census. The excellent Indian staff which the Bureau has recruited, including those in Census Community Awareness Specialist positions, have been crucial to the active involvement of Indian tribes and organizations in 1990 Census planning and promotion.

2. The Tribal Liaison Program, which has brought Census promotion activities directly to the tribal level and stimulated unprecedented awareness of the Census in reservation communities. Outreach efforts to Indian groups in off-reservation areas should be continued and expanded.

3. Meetings with Indian organizations, including Indian job training programs. Such meetings have been essential in spreading the word on the 1990 plans for a count of the Indian population.

4. The American Indian and Alaska Native Advisory Committee, a group of Indian and Alaska Native leaders and technical experts. This special Advisory Committee has enabled Indian ideas and concerns to be reflected in Census planning and operational activities.

All of these and related efforts deserve your full support in the Fiscal Year 1990 appropriations for Census Bureau operations.

The importance of accurate, up-to-date data on the Indian population and on economic conditions in Indian communities, on and off reservation, will not end on Census Day in 1990. The outreach of the Bureau to Indian groups and our involvement in

Census activities must continue in order for the federal government to fulfill its unique responsibilities to Indian people.

The information collected in the 1990 Census must be tabulated and widely distributed to Indian groups in a timely manner after the decennial count is over -- not years later as happened after the 1980 Census.

Technical assistance and training must be provided to Indian data users to enable them to make the most of the 1990 information in designing and evaluating programs to improve the well-being of Indian people.

Equally important, there must be a program to collect, analyze and distribute demographic, social and economic information on Indian people and Indian communities between the decennial Censuses of Population.

The only time the federal government systematically collects information on the status of the Indian population is once every ten years. There is no effort made to update the data. Despite the federal responsibility to Indian people and the many federal programs that serve Indian communities, there is currently no comprehensive information on American Indians more recent than that collected almost a decade ago.

This is not true for other segments of the population. Over the last twenty years the Census Bureau has made major advances in its data collection and analysis activities involving other racial and ethnic groups. Data on the Black and Hispanic populations is collected and published on a regular basis, using the Current Population Survey and other special Census programs.

The lack of intercensal information is particularly frustrating to Indian job training programs. We have no up-to-date figures on the need for job training services or on labor market conditions in Indian communities and directly affecting Indian workers.

Currently Indian JTPA programs are judged on the basis of performance standards, designed and enforced by the Department of Labor, which are built around data on the economic conditions of non-Indian people. This is not an intelligent way to run an important program, providing essential services to Indian workers.

Looking beyond Census Day 1990, we urge the Committee to support efforts to continue the direct involvement of Indian tribes and groups in Census Bureau activities and to fill the ten-year void in information on conditions affecting Indian people.

Specifically, we ask the Committee to support:

1. Continued funding for Indian staff positions engaged in outreach toward Indian organizations and in the technical work of data collection, tabulation and analysis of information on the Indian population. This specifically includes the Census Community Awareness Specialist positions in the various Regional and field offices.

   The Bureau has developed a pool of very talented Indian people, knowledgeable in the gathering and use of data relevant to the planning of Indian programs. This expertise must not be lost following the 1990 Census when there is so much work to be done in assisting Indian data users and in planning further Census work in Indian communities.

2. Continued funding for the planning of a follow-on survey to be conducted in Indian communities in 1991.

   In the legislative history associated with the FY 88 appropriation bill, the Congress directed the Bureau to plan for a special "follow-on survey" of Indian communities in 1991, comparable to work that was done in 1980. The Bureau did start some planning activities, but dropped them completely when there was no request to continue this work in the legislative history of the FY 89 appropriations bill.

3. Funds to design a program of intercensal data collection and analysis examining conditions affecting Indian people.

4. The establishment of a special "Information Center" for demographic, economic and other information on the Indian population. This service, parallel to the Bureau's current prototype project with the Research Department of the National Urban League, is vitally needed to provide one place to which Indian data users can go when they need detailed information on conditions in Indian communities.

STATEMENT OF THE NATIONAL PUBLIC RADIO

Mr. Chairman and members of the Subcommittee, I am pleased to submit testimony in support of appropriations for the Public Telecommunications Facilities Program (PTFP) administered by the National Telecommunications and Information Administration (NTIA).

National Public Radio (NPR) represents over 350 public radio stations. Many of these stations were built with the help of PTFP funding, and they continue to rely on PTFP grants to help replace costly equipment that is old and no longer able to deliver reliably a quality broadcast signal to the public radio audience. Communities across the country and the Congress have made a substantial investment in the public radio system, and it must not be allowed to deteriorate. Last year the Congress authorized $39 million for the PTFP program in FY 1990, and I strongly urge this Subcommittee to appropriate that full amount.

The PTFP program provides matching grants to help public radio and television licensees extend their signals, purchase equipment to put new stations on the air, or replace aging, obsolete equipment. The Public Telecommunications Facilities Program's investment of over $342 million since its inception in 1963 has made it a key factor in the building of the public broadcasting system in this country. While 95 percent of the American people can now receive a public television signal, public radio's reach is limited to 86 percent of the population. We must expand our services to as much as practical of that remaining 14 percent.

In fact, the Public Telecommunications Act of 1988 authorizing appropriations for the Corporation for Public Broadcasting (CPB) specifically calls for expansion of the public radio system to reach unserved and underserved audiences. To do this, we must not only extend the reach of existing stations into unserved areas; we must also meet our obligation to serve more and different groups of Americans. The Senate Report accompanying CPB's authorizing legislation notes that, "In addition to areas of the country where there is no public radio service, there are large communities or metropolitan areas with diverse populations that cannot be adequately served by one or even two public radio stations. To serve the specialized interests of large segments of the population that are not being met requires both creation of new stations and programming of interest to these people." One way to accomplish this is through the creation of new, CPB-qualified stations whose programming addresses the needs of an increasingly diverse audience, especially ethnic minorities, the elderly and children. The PTFP remains vitally important to achieving this goal. The program's 1988 grants will make public radio service available to over two million previously unserved people.

One of those grants will bring first public radio service to 462,626 people in Bay and Saginaw counties in Michigan and to the "Thumb" area of the state. A joint project of Central Michigan University and Delta College, the grant will fund a microwave interconnection system linking the studios of both schools with the transmitter. A grant to station KBRW-AM in Barrow, Alaska will help it extend its signal via translators to 700 residents of the unserved northern Alaska communities of Nuiqsut, Kaktovik and Point Lay.

Another grant to KHPR-FM in Honolulu, Hawaii will enable the station to purchase 500 SCA receivers to use with a new radio reading service operated by the state library, which will utilize the station's subcarrier channel, and serve the island of Oahu.

In Oregon, station KBOO-FM, Portland, will use its grant to replace transmission equipment and to help construct a translator which will bring first service to 24,136 people in White Salmon. And at Ashland's KSOR-FM, a grant will facilitate construction of a repeater station to serve 36,307 previously unserved people in Roseburg. It will also enable the network operation center to improve its program production facilities to better serve the Roseburg facility and the other stations in the network.

As the public radio system matures, the PTFP is increasingly important for replacement of worn out and obsolete equipment. A recent survey of NPR's member stations provides us with a clearer picture of their current and future equipment needs. Nearly 60 percent of survey respondents reported relying on transmission or production equipment for which spare parts are no longer available (or, if available, are prohibitively expensive and difficult to obtain).

One fact that emerged is particularly telling -- over 86 percent of respondents have been forced off the air by equipment problems at least once in the past three years; of those, the average was eight times in that same period. While most were off the air for less than a day, there are some "horror stories" of much longer periods of down-time. NPR member station WSLU-FM in Canton, NY, doesn't have a generator. When weather-related power outages occur, they must rent a generator from someone nearby and run an extension cord out of the station's window to the generator to stay on the air.

Many of our stations will need to replace major equipment in the very near future (within three years). The most frequently cited pieces of equipment in this category (and their average replacement cost, as estimated by the station) were: transmitters at $60,000 each; antennas at $37,000 each; transmission lines at $20,000 each; and control room equipment at $52,000 per station.

Towers are by far the most expensive to replace at an average cost of $184,000. The average tower age at our member stations is 15.7 years, and although they generally last for 20 or more years, it is clear that a large expense looms for all of our stations, one which would be prohibitive without PTFP's help.

While public radio stations are raising an increasing portion of their annual budgets from non-federal sources (federal funds provide an average of only 15 percent of station budgets), major equipment purchases are still beyond the reach of most. Stations that already are tapping community resources for on-going expenses such as programming and day-to-day operations find it difficult to raise the large sums of money required for capital equipment purchases.

PTFP grants have the ability to leverage additional funds. This is important for capital replacement projects as well as the establishment of new service. In FY 1988, the average public radio grant of $57,316 represented only 61 percent of the cost of the average project funded. The role of such seed money cannot be overestimated in public radio's fundraising scheme. The continuing help of the PTFP is vital to keeping the nation's public radio system functional, especially in light of the large sums of money that will be required in the not-too-distant future.

Many PTFP grants for replacement of obsolete equipment result in a stronger signal that can expand the reach of a station into underserved or unserved areas; others prevent stations from going off the air due to equipment failures, thereby ensuring continuous service to their listeners. A sampling of FY 1988 grants and pending 1989 applications follows:

- KCAW-FM in Sitka, Alaska received a grant to extend and improve its translator network. It will activate three translators in Sitka to decrease interference problems, and will obtain another translator to bring first service to Port Alexander.

- The Wisconsin Educational Communications Board has applied for a FY 1989 PTFP grant to improve and expand public radio in the state by increasing power and replacing the transmitter of WHWC-FM, Menominie; replacing the antenna of WHAD-FM, Delafield; and replacing the transmission line of WHLA-FM, La Crosse. These improvements would make public radio service available to 27,000 additional people in Wisconsin.

- In Memphis, Tennessee, WKNO-FM will replace its 16-year-old transmitter, and replace or acquire other needed equipment.

- WBKY-FM in Lexington, Kentucky will increase its power by relocating and replacing the transmission facilities; the project will improve reception and provide first public radio service to 114,940 people.

- In Spokane, Washington, KPBX-FM will replace studio equipment and purchase a back-up studio-to-transmitter link to ensure continuous service to its listeners. The station also has a 1989 application pending which would extend its signal using translators in Bridgeport, Oroville and Twisp to provide first public radio service to 6,500 residents of northeastern Washington.

The Administration has proposed to discontinue the PTFP program; however, the ongoing need for it is demonstrated by the historic and continuing imbalance between available funds and grant requests. In FY 1988, there were 304 applications for PTFP funds totaling $67.9 million. One hundred and twenty-five grants were awarded, totaling $18.4 million. This represents a decrease of $800,000 from FY 1987 levels. The extremely tight competition for PTFP grants has resulted in a situation where the most drastically needed replacement projects are funded first, while others must wait through several rounds before they are funded. By the time these projects are funded, the stations may have already passed the critical point. This situation forces a kind of crisis management that is not conducive to consistently providing the unique service the American public has come to expect from its local public radio stations. I strongly urge this subcommittee to appropriate the full $39 million authorized for the Public Telecommunications Facilities Program in FY 1990.

STATEMENT OF NATIONAL WILDLIFE FEDERATION

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received a statement from the National Wildlife Federation with regard to the National Marine Fisheries Service as well as the Great Lakes Fishery Commission. In addition the federation later sent a letter to the subcommittee. By direction of the chairman, the statement and letter have been printed in the hearing record.]

[The information follows:]

STATEMENT OF THE NATIONAL WILDLIFE FEDERATION

Thank you for the opportunity to submit to the Subcommittee this statement on the Fiscal Year 1990 (FY 90) budgets of the National Marine Fisheries Service (NMFS), an agency of the Department of Commerce, and the Great Lakes Fishery Commission, an agency of the Department of State. This statement will also comment on the Coastal Ocean Program initiative of NMFS' parent agency in the Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA).

The Administration's FY 90 budget request for the NMFS is a major concern to the NWF. We are deeply dismayed that the request closely tracks the deficient proposals offered by the Reagan Administration of the past eight years. The FY 90 request that would cut the agency's budget by more than 40% ignores the huge resource conservation problems already facing this agency, as well as its new and expanding authorities. If enacted, this budget request would shackle NMFS and preclude its ability to properly manage the vast, valuable resources for which it is responsible. We strongly oppose this cut, and urge the Subcommittee to provide critically-needed increases, detailed below, to NMFS' fish, wildlife, and habitat conservation programs.

National Marine Fisheries Service

For the past eight years, Congress has consistently rejected the Administration's requests for deep cuts in NMFS programs. However, the agency has continued to lose fiscal ground incrementally through inflation, federal pay increases, and an across the board budget cut of 6% in FY 88. Erosion of NMFS' funding base continues to jeopardize the tremendous bounty yielded to the Nation by the resources the agency manages. NMFS reports that commercial U.S. landings had a dock side value of $3.1 billion in 1987. The agency also supports a burgeoning sport fishery, which is estimated to number 17 million people, harvesting an estimated 700 million pounds of marine fish, with an estimated economic value of $13.5 billion. Further, the agency is responsible for the management of 21 threatened and endangered species and 52 marine mammal species. These species are key components of healthy marine ecosystems.

The continued abundance of these resources face substantial threats from habitat degradation and overharvest. Recent reports from the Congressional Office of Technology Assessment (Wastes In Marine Environments: 1987) and from the House Subcommittee on Fisheries and Wildlife Conservation and the Environment (Coastal Waters In Jeopardy: Reversing The Decline and Protecting America's Coastal Resources: 1988) have provided abundant evidence of diminishing coastal and marine water quality and wetlands loss. Further, a recent memorandum from the assistant Administrator for Fisheries (State of the Fisheries: March 17, 1989) regarding the status of various fisheries under fisheries management plans revealed large scale overharvest of many valuable fish stocks in each region.

President Bush has joined many commercial and recreational fishing and conservation groups in calling for a new national committment to improving coastal and marine habitat conditions and to achieve a "no net loss of wetlands". The NWF fully endorses these goals. However, to achieve these goals, NMFS must play an aggressive role in providing sound stewardship of its fish and wildlife resources, and the habitats on which they depend. The FY 90 Administration request, if enacted, would cripple the agency from participating meaningfully in these efforts.

The NWF's specific funding requests for the NMFS programs are appended to this statement as Table 1. However, several programs and issues important to the NWF are discussed in detail below.

Marine Fisheries User Fees

This year, the Administration again proposes to offset a portion of the proposed 40% cut through imposition of user fees on sport and commercial fishermen (Exclusive Economic Zone Revenue Assurance Act). The NWF believes it is completely unrealistic to assume passage of this Act in FY 90 budget proposals, given the substantial controversies surrounding the current proposal. The NWF encourages Congress, through the authorizing committees, to continue to review the fiscal needs of NMFS and to determine whether sound user fee proposals can be developed. In the interim, the NWF recommends opposition to the Administration's user fee proposal as a means of substituting user fees for general fund revenues for the FY 90 NMFS budget.

Information, Collection and Analysis

Programs contained in this budget line item provide for the collection, analysis and dissemination of biological, environmental, economic and statistical data on fish stocks, marine mammals, endangered species and the habitats on which they depend. The NWF finds the Administration's proposed $38 million cut in this program indefensible because of the current lack of vital information needed for many species, and the increasingly complex fisheries management issues confronting the NMFS and Regional Fisheries management Councils. Therefore, the NWF recommends $38 million be added to the Administration's request to achieve FY 90 base funding level of $103.6 million. The following are examples of Information, Collection and Analysis programs which are of particular interest to the NWF.

- Fisheries research and survey programs form the foundation of the agency's fisheries management decisions which are critical to the long term conservation of marine fish stocks. These include programs such as fisheries stock assessments, monitoring, and surveys; salmon treaty research, Alaska salmon enhancement, and near-shore fisheries research and data analysis.

- The Southeast Area Monitoring and Assessment Program (SEAMAP) collects, manages, and disseminates data on living marine resources in the southeast region. Fisheries managers need SEAMAP information to ameliorate the lack of accurate data required for making sound management decisions before fisheries crises, such as the recent red drum "crisis," arise. Data collection through SEAMAP is particularly valuable because it allows more scientifically accurate population estimates than are possible using information gathered from commercial and recreational fisheries. To date, management agencies have used SEAMAP data for a variey of projects, including selection of optimum periods for opening and closing areas to shrimping, development of conservation policies for bluefin tuna, and identification of mackerel spawning and nursery grounds.

- The habitat research program provides vital information necessary to evaluate and mitigate the effects of wetlands loss, pollution, and other forms of environmental degradation affecting fishery production. Research on critical fish habitats for food, cover, spawning, nursery, and migration focuses on coastal estuarine wetlands, and thus is crucial to achieving the President's goal of no net loss of wetlands.

- The habitat evaluation methodology program provides the NMFS with quantitative habitat information and is essential to giving the agency better predictive capability for development project/habitat decisions. It also yields improved habitat mitigation technologies necessary to achieve the no net loss of wetlands goal. For example, researchers at the Beaufort, NC laboratory funded by this program are working to establish the functional importance of wetland and estuarine habitat loss on estuarine-dependent species and to determine the relative values of different wetland types to fishery production.

- Protected species research supports NMFS responsibilities for managing protected species under the Marine Mammal Protection Act and the Endangered Species Act. Both these laws were reauthorized last year, each adding new responsibilities to the NMFS. One of many needs being addressed by this program is evaluation of the effectiveness of various turtle excluder devices (TEDs) which will be required for use by shrimpers throughout the Gulf of Mexico and the south Atlantic on May 1, 1989. This research is crucial to the long term acceptance and use of TEDs by shrimpers.

Conservation and Management Operations

This budget category contains programs which provide for management of fish stocks, marine mammals and endangered species. The Administration proposes to cut the program by $15.7 million, which would severely impair the agency's ability to manage fish and wildlife resources. Therefore, we recommend the following additions be made to the Administration request:

- Add $3 million (for a total of $6.5 million) to the habitat conservation program. This program fulfills NMFS' habitat protection responsibilities through various consultation requirements mandated by several statutes, including NEPA, the Endangered Species Act, and the Fish and Wildlife Coordination Act. Through this program, the NMFS advises other Federal agencies on the environmental effects of proposed actions that would affect the estuarine and marine environment and marine fisheries. The NMFS' permit review work is essential not only to maintenance of healthy fisheries stocks, but also to protection of vital coastal wetlands and the many ecological functions and economic benefits they provide. The agency reported that its 89 FTE's working in the program commented on 6,900 permits in FY 88 and it estimates over 7,000 permits will be reviewed in FY 89, an average of 79 permits per FTE per year. Clearly, additional personnel and funding are essential for improving this overburdened and understaffed review process.

- Add $4.6 million (for a total of $8.1 million) to restore the Regional Fishery Management Councils to FY 87 levels. The Regional Councils are charged with planning, monitoring, and managing marine fisheries of the eight regions. The Administration's FY 90 budget proposes to cut funds for the Councils by roughly 50%. This cut would seriously impair the important work of the Councils at a time when many marine fish species are still in need of management plans, and overharvest problems persist in species under existing plans. Furthermore, the Councils are becoming increasingly involved in habitat issues affecting fish stocks, and so the NWF recommends restoration of the FY 87 level to improve their fisheries management efforts and to upgrade their habitat protection capabilities.

- Add $7.0 million (for a total of $10.6 million) for the Protected Species Management program. Currently underfunded, this program is now charged with implementing substantial new responsibilities acquired through the Marine Mammal Protection Act Reauthorization of the 100th Congress (P.L. 100-771). Despite these new responsibilities, the Administration proposes cutting the program by $2.0 million. To enable the NMFS to implement the new marine mammal conservation provisions of P.L. 100-711, and to maintain its other important endangered species management programs (e.g., sea turtles, shortnose sturgeon) at a functional level, the NWF recommends substantial additional funding.

Grants To States Programs

These programs provide grants to states for cooperative state/federal research and management of economically-valuable anadromous and interjurisdictional fisheries, such as striped bass, American shad, bluefish, and various salmonid species. Continued state and federal cooperation under this successful partnership is vital if the conservation and management programs aimed at restoring these fisheries are to succeed. Despite the clear demonstrated need for these programs, the Administration proposes no funding for either. The NWF opposes elimination of these programs and recommends funding the Anadromous Fish program at $3 million (including $0.5 million for the Emergency Striped Bass Study), and funding the Interjurisdictional program at $5 million (including $330,000 for the three Interstate Fishery Compact Commissions.

COASTAL OCEAN PROGRAM (NOAA)

The only "bright spot" contained in the Administration's FY 90 request is its proposal for the Coastal Ocean Program. Funding this program of NOAA offers an excellent opportunity to bolster the agency's current research and conservation efforts with an integrated, multidisciplinary approach combining the expertise and perspectives of every NOAA division. The program seeks to increase understanding of coastal ocean processes and to develop predictive capability in three areas: environmental quality, fisheries production, and coastal hazards. NMFS participation can be particularly valuable in the first two of these areas. Since NMFS facilities are already working on coastal habitat and research projects through the Habitat Research and Habitat Evaluation Methodology programs, they are well equipped to take on the additional responsibilities to be funded through the Coastal Ocean Program.

Major NMFS-related environmental quality research projects will focus on the structure and function of the principal estuarine and coastal ecosystems, the habitat requirements of marine species which spend all or part of their life cycle in nearshore areas, the impacts of physical alteration and chemical pollution on these major habitats, and the degree to which restored and created habitats replicate the effectiveness of natural habitats in supporting living marine resources. Efforts to characterize and valuate coastal ecosystems will include mapping of existing estuarine and coastal habitat types by state, county, and watershed. Other investigations will examine the contribution of natural events and processes to loss of estuarine and coastal habitats.

Research on the effects of manmade nutrients on productivity in coastal areas will focus on developing methods to predict effects of nutrient release, abatement, and retention on estuarine productivity and the likelihood of inducing hypoxia. Research on toxic chemical pollutants will explore the routes by which pollutants enter marine biota and follow their fate in target organisms. It will also examine the direct and indirect biological effects of toxics on individual organisms and their populations. Finally, the program will enhance review of proposed policies and projects with potential effects on important coastal habitats. In addition, fisheries productivity research will focus on improving NOAA's fisheries monitoring and assessment programs, determining links between the physical environment and fisheries productivity, and developing improved understanding of the effects of natural and human-induced changes in fisheries productivity.

The NWF therefore supports the Administration's request for $12.4 million to fund the Coastal Ocean program initiative. However, it is important that ongoing programs of NOAA not be sacrificed to sustain the coastal project, but that this new program supplement existing efforts, particularly those relating to fish and wildlife conservation. As the Oversight Report of the

Committee on Merchant Marine and Fisheries noted (December, 1988), these problems require both a strengthening of basic programs and a sharper focus of efforts on coastal systems. It is in this capacity the NWF believes the Coastal Ocean Program can be particularly valuable.

Great Lakes Fishery Commission (Department of State)

Under authority of the 1955 Convention on Great Lakes Fisheries, the Commission maintains chemical control of sea lamprey populations in the Great Lakes and supports research into alternate control methods. Due to recent static funding levels for the Commission, and substantially increased costs associated with lamprey control, the Commission needs a significant increase in its FY 90 funding above the Administration request of $5.2 million just to maintain its current level of effectiveness in controlling sea lamprey populations. The NWF therefore recommends adding $4.2 million to the Administration's FY 90 budget proposal for the Commission (a total of $9.4 million) to address this shortfall. Significant decreases in salmonid species populations in the Great Lakes region, and associated depression in sport fishing industries, are probable if additional funding is not provided. Attached is an emergency resolution passed unanimously at the 1989 Annual Meeting of NWF which supports this recommendation.

This completes our comments on the FY 90 budgets of the NMFS and the Great Lakes Fishery Commission. We look forward to working with you and your staff in the coming months to ensure that the NMFS remains on sound financial footing.

Attachment

Resolution No. 27
1989

FUNDING GREAT LAKES SEA LAMPREY CONTROL PROGRAMS

WHEREAS, the Great Lakes Fishery Commission maintains chemical control of sea lamprey populations in the Great Lakes and supports research into alternate control methods, but static appropriation of Commission funds and escalating operational costs have resulted in a critical funding shortfall; and

WHEREAS, according to the Commission, the result of this funding problem will mean a reduction in research into alternate methods of sea lamprey control and that the sea lamprey control effort will be reduced effective fiscal year 1990, resulting in elimination of all control for Lake Erie and a forty percent reduction in control efforts in Lake Michigan, Lake Huron and Lake Ontario; and

WHEREAS, according to the Commission, by the year 2000 this reduction in control effort will result in a doubling of the population of sea lamprey, in a 50% decline in trout and salmon abundance, and in a substantial reduction in other fish stocks; and

WHEREAS, according to the Commission, this would result in a reduction in sport fishing expenditures of approximately $525 million and a loss to the commercial fishery of approximately $135 million, resulting in economic dislocation in communities dependent on these fisheries; and

WHEREAS, the Commission has estimated the total funding needs for the United States and Canada to maintain existing lamprey control and research activities to be approximately $15.5 million for fiscal year 1990;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation in annual meeting assembled March 16-19, 1989, in Arlington, Virginia, urges the U.S. Congress and the Canadian Parliament to appropriate full funding of Great Lakes sea lamprey control and research programs as specified within the terms and authority of the Great Lakes Fishery Commission.

LETTER FROM THE NATIONAL WILDLIFE FEDERATION

June 8, 1989

The Honorable Ernest F. Hollings
United States Senate
Chairman
Subcommittee on Commerce,
Justice, State and Judiciary
Committee on Appropriations
Washington, DC 20510

Dear Fritz:

This letter supplements our statement of May 25, 1989 on the proposed Fiscal Year 1990 budget for Commerce, Justice, State and Judiciary.

In anticipation of the enactment of S. 583, the National Plumbing Products Efficiency Act of 1989, we request that the subcommittee include $1,000,000 for the Department of Commerce in the FY

90 Appropriations Bill for the administration of this program. With these funds, the National Institute of Standards and Technology can establish test procedures for plumbing products that are regulated under the bill.

The purpose of the bill is to establish national standards for plumbing products that will promote water conservation and help America to manage its water resources more wisely. The bill will set national standards and require labeling on water-using products, in much the same way as the widely supported National Appliance Energy Conservation Act of 1987 regulates energy-using appliances.

In addition to saving billions of gallons of treated water, implementation of this program will reduce the need for costly expansions of water and wastewater treatment facilities, saving communities and consumers across the country billions of dollars. We hope that Congress will wisely invest federal dollars in water conservation by appropriating these funds to the Department of Commerce.

Sincerely,

Jay

JAY D. HAIR

SUBCOMMITTEE RECESS

Senator HOLLINGS. Thank you very, very much. That completes our hearing for today. The subcommittee will be recessed until 10 a.m., Thursday, April 20, when we will hear from the National Oceanic and Atmospheric Administration in room S-146 of the U.S. Capitol Building.

[Whereupon, at 11:16 a.m., Wednesday, April 19, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 20.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, APRIL 20, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:04 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, and Rudman.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF DR. WILLIAM E. EVANS, UNDER SECRETARY FOR OCEANS AND ATMOSPHERE

ACCOMPANIED BY:

- DR. RODNEY WEIHER, COMPTROLLER
- MARK E. BROWN, DIRECTOR, OFFICE OF BUDGET, DEPARTMENT OF COMMERCE
- DR. MELVIN PETERSON, CHIEF SCIENTIST
- B. KENT BURTON, ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE
- THOMAS PYKE, ASSISTANT ADMINISTRATOR, NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICE
- JAMES BRENNAN, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE

OPENING REMARKS

Senator HOLLINGS. This morning, the subcommittee will consider the 1990 budget of the National Oceanic and Atmospheric Administration. The total appropriations requested are $1,013,198,000, a net decrease of $229,809,000 from the 1989 appropriations. Cutting NOAA's budget is an annual routine of the Reagan/Bush administration's, but I was startled to find that the 1990 request is actually $81 million less than the awful budget the Department sent up for 1989. Talk about going backwards. Secretary Mosbacher would probably say this is another one of these expected rather than requested programs.

Yesterday we mentioned that NOAA's budget includes reductions or elimination of some 87 programs aggregating $335 million.

We do have some increases such as $12,400,000 for President Bush's coastal initiative and an $11 million enhancement of the global and climate change program.

Our principal witness is Dr. William E. Evans. Yesterday the Secretary told us that there would be a change in the leadership of NOAA. I would be remiss if I did not note how much we have enjoyed working with Dr. Evans. He is a solid scientist with his feet on the ground. How much better things would have been if we had Dr. Evans at the top for all 8 years of the Reagan administration instead of your predecessors.

I yield to the ranking minority member.

Senator RUDMAN. Well, I share your views, Mr. Chairman. Dr. Evans, you have only been with NOAA a few years, but we have enjoyed the association. I understand that you are going to Texas A&M University at Galveston?

Dr. EVANS. Yes, sir.

Senator RUDMAN. I am not sure that is a fair trade. Texas gets you and this subcommittee gets Phil Gramm. [Laughter.]

In reviewing the NOAA budget for this year, we get Gramm, Rudman, and Hollings on the subcommittee. That spells trouble for anybody. [Laughter.]

Senator HOLLINGS. You will get more calls than you did on Mayor Barry on that one. [Laughter.]

Senator RUDMAN. I am just looking at your budget request. It is like a mimeograph year after year. I guess it reminds me a little bit of Yogi Berra when he said "It's deja vu all over again." So go ahead.

We look forward to your testimony, but I dare say that what we finally do and what this document represents will bear little resemblance to each other, if the past is any indication.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR INOUYE

Senator HOLLINGS. The distinguished senior Senator from Hawaii and valued member of the subcommittee, Senator Inouye, is necessarily detained by another appointment. He has a prepared statement that will be printed in the record at this point.

[The statement follows:]

STATEMENT OF SENATOR DANIEL K. INOUYE

Dealing with the Administration's annual budget request for the National Oceanic and Atmospheric Administration (NOAA) is like playing with a boomerang. Each year Congress throws it away and it always comes back. Frankly, Mr. Chairman, I am tired of playing this game.

NOAA continues to sacrifice its ocean research efforts to fund its atmospheric initiatives. NOAA repeatedly proposes to terminate programs which Congress always restores. In fact, some NOAA program managers plan to expand their programs relying upon expectations that Congress will continue to restore these programs each year.

The NOAA budget is full of contradictions. NOAA identifies global change research as a high priority, yet terminates funding for ongoing programs which contribute valuable research to this mission. NOAA identifies weather service modernization as a high priority but eliminates funding to maintain existing weather data gathering equipment pending modernization. NOAA identifies coastal ocean science as a high priority but eliminates funding for the national coastal zone management program, thereby ignoring NOAA's obligation to assist States in critical resource management to improve coastal and ocean pollution.

Mr. Chairman, while I believe in giving the new Administration an opportunity to prove its commitment to NOAA's mission, if the current trend in funding for NOAA at the Department of Commerce does not change, I recommend that Congress take a serious look at whether NOAA would be better off as an independent agency or within another existing agency.

Thank you for this opportunity to share my views on this matter.

PREPARED STATEMENT

Senator HOLLINGS. Thank you. Dr. Evans, your statement in its entirety is in the record. You can deliver it or highlight it as you wish.

[The statement follows:]

STATEMENT OF WILLIAM E. EVANS

Mr. Chairman and members of the Committee, I am pleased to appear before you today in support of the FY 1990 budget request for the National Oceanic and Atmospheric Administration (NOAA). NOAA is requesting total budget authority of $1,066,898,000, which includes $30.0 million proposed for transfer from the Airport and Airways Trust Fund. Because of the technical aspects of some parts of the budget I have brought with me today Rodney Weiher, NOAA Comptroller, and other senior members of my staff to address any specific issues.

This request provides funding focusing on essential ongoing programs and activities. It places a high priority on developments in the weather and satellite areas and addresses the need for research on global climate change and coastal ocean quality.

The request is consistent with the Administration's commitment to reducing the Federal deficit while maintaining high priority government services. Overall, our budget addresses the current needs of NOAA while providing the funding to move forward. The budget also reflects the shifting of responsibility for certain programs to the beneficiaries. I would like at this point to go through the budget highlights by activity:

In the National Ocean Service we will continue with the production and distribution of nautical and aeronautical charts and with the geodetic referencing system. An increase of $1.660 million is proposed for the development of an improved production capability. This Automated Nautical Charting System II (ANCS II) will provide higher quality products. This proposal will be revenue neutral as NOAA will increase public chart prices by approximately $1.00 per chart to recover the requested budget authority. We will continue providing technical products such as tide data surveys, charts to promote safe and efficient marine transportation, and coastal and offshore construction. We will provide information during the response to spills of oils and hazardous materials in order to minimize the adverse effects of marine pollution.

In our effort to protect precious natural resources, we are proposing an increase of $12.4 million for an integrated NOAA-wide program in coastal ocean science designed to improve monitoring, understanding and prediction of environmental degradation of the coastal oceans. This program is part of our ongoing effort to enhance, coordinate and integrate our current programs to improve the understanding of coastal ocean processes. Our effort will be organized to improve: observation and diagnosis; data management, synthesis and information transfer to key decision makers (i.e. Congress, Governors) and research model development relating to coastal ocean science.

The coastal ocean program along with the global climate program has helped to integrate the various programs within NOAA. All of our line offices are working together towards a common objective that demonstrates the wisdom of having an organization like NOAA. In order to do more with less we must focus our resources and improve our efficiency.

NOAA will continue to work with coastal states and territories in implementing programs to promote the rational use of the Nation's coastal zone and designate and manage biologically valuable marine and estuarine areas. Now that Federally approved coastal zone management programs have been instituted in 29 coastal states and territories covering over 94 percent of the U.S. Coastline, the Coastal Zone Management grant program has achieved its purpose and is proposed for termination in FY 1990.

The budget request for the National Marine Fisheries Service places highest priority on conducting the research necessary to make decisions. We will continue to provide scientific information for development and updating of fishery management plans. The National Marine Fisheries Service will provide appropriate Federal industry assistance in the area of fish product quality, and safety research.

We will use our data and research information to make conservation and management decisions for those fish stocks, marine mammals and endangered species that require management. Enforcement of fishery laws and regulations will be a priority. We will address critical habitat issues and meet our responsibilities.

In the area of oceanic and atmospheric research, and in recognition of the need for a cohesive national program to understand the global system and to develop the capability to predict changes, we are proposing an enhancement of $11 million for our program in Climate and Global Change which is part of the interagency U.S. Global Change Research Program.

This program was designated a Presidential initiative in the FY 1990 budget.

We have made excellent progress in understanding global atmospheric chemistry, including "greenhouse warming", stratospheric ozone depletion and acid rain. We will continue to develop and test the wind profiler system with the goal of acquiring and deploying a demonstration network of 30 profilers in the Central U.S. by the summer of 1990.

We are requesting an increase of $3.1 million to upgrade the computer facility at our Geophysical Fluid Dynamics Laboratory to address problems through modeling and simulation of the atmosphere and oceans.

Adequate funding has also been provided in NOAA's budget to continue many important programs including PROFS, severe (mesoscale) weather research, hurricane prediction research, space environmental monitoring and prediction research, and the Great Lakes Environmental Research Laboratory.

Funding for the National Sea Grant College Program and the NOAA Undersea Research Program (NURP) are not being requested. The Sea Grant program has accomplished its intended goal of establishing a network of institutions with expertise in marine science, education and advisory services, and is now attracting private and state support. NURP has progressed well and is being handled by universities through grants from other agencies. NURP clearly provides services which are low priority and not central to NOAA's mission.

During FY 1990, NOAA will continue progress toward a modernized and restructured National Weather Service. This budget will continue the procurement of an automated surface observing system (ASOS), continue production of the next generation radar (NEXRAD) and provide class VII supercomputer capabilities.

We will also continue development of a cost effective replacement for the National Weather Service's current information processing and communications system. These systems will help us modernize the NWS with the latest technology and science to improve our severe weather and flood warnings and forecasts to the Nation.

I cannot stress too strongly how important it is to shift our priorities and focus to our Coastal Ocean, Global Change and Weather Service Modernization programs; these are national priorities.

This budget provides funding associated with the annual cost of procuring spacecraft, launches, and associated ground systems for the polar and geostationary orbiting environmental satellites. The procurement of the next series of geostationary satellites (GOES I-M) will provide continuous weather observation from space through the late 1990's. These satellites will have improved sensor capabilities to maintain surveillance and assist in the prediction of severe storms such as hurricanes and tornadoes.

Our request provides funding for polar orbiting spacecraft to be launched alternately into both morning and afternoon orbits at 15-16 month intervals to provide for continuity of operational coverage.

An increase is requested to continue the LANDSAT Commercialization program that was initiated in FY 1985. Funding is requested to complete the procurement of the spacecraft segment, LANDSAT 6, which will be operated by the private sector. The National Space Council will be conducting a policy review and, until that review is completed, the Administration is committed to operating the Landsat 4 and 5 satellites.

The FY 1990 budget provides funds to continue the consolidation of almost all of NOAA's Washington area employees into one location in Silver Spring, MD. Additional funds of $3.4M are requested to occupy the second building. The consolidation will result in improvements in management efficiency. We are currently in the first building and we can already see the benefits of being collocated.

We are again requesting increases to: begin the replacement of critical components of the airborne navigation system used on two research aircraft, provide for the upkeep of our Western Regional Center in Seattle, Washington, and provide the procurement support necessary for major National Weather Service and satellite systems.

Thank you Mr. Chairman, I would be happy to address any questions which you or other members of the committee might have regarding our budget request.

BIOGRAPHY OF WILLIAM E. EVANS

William E. Evans, under secretary for oceans and atmosphere and administrator of the Department's National Oceanic and Atmospheric Administration (NOAA), took office on April 1, 1988.

He establishes federal policies and directs agency programs to improve the understanding, management, conservation and development of America's marine and atmospheric resources for economic and social benefit.

NOAA is responsible for investigating and understanding the chemical and physical state of our oceans and atmosphere; predicting weather and issuing severe storm warnings and forecasts to protect life and property; promoting the wise development and conservation of our living marine, coastal, and deep seabed mineral resources; and preserving endangered marine species, marine mammals, and unique estuarine areas.

Evans was appointed to his position after 18 months as NOAA's assistant administrator for fisheries.

He is president emeritus of the Hubbs Marine Research Institute in San Diego, Calif. He was nominated by President Reagan and was confirmed by the Senate as chairman of the Marine Mammal Commission on March 30, 1984. Evans is widely recognized for research on the effects of acoustics on the behavior of marine mammals.

He has conducted aerial surveys to collect data for stock estimates of dolphins and has done extensive research for the Navy on the dolphin's ability to navigate and adapt to the ocean environment. He has pioneered in the use of remote sensing data from satellites for biological oceanography. He has published over 100 scientific articles and chapters in textbooks, is affiliated with numerous professional organizations, and has taught at several major universities. Evans has received numerous awards for science and public service.

Born Oct. 11, 1930, Evans has a doctorate in physiology, ecology, biology and animal behavior from the University of California - Los Angeles, a master's degree from Ohio State University and a bachelor's degree in education from Bowling Green State University. He is married to the former Phyllis Roberts and is the father of two sons, Jonathan A. Evans of Apple Valley, Calif., and Dr. Timothy J. Evans of Westlake Village, Calif.

OPENING STATEMENT OF DR. EVANS

Dr. Evans. Following on the lead that Senator Rudman gave me, I think it would probably be repetitious for me to go through the budget in detail. As he said, you have seen this budget before.

I was hoping that I was going to be able to use the same excuse that the Secretary of Commerce used yesterday, where he was stating that this was his first budget. This is my last, and also the fact that he apparently got some extra credit from the fact that he was from Texas, and I was wondering if maybe I might get some because I am going to Texas, but apparently not.

So I think what I would like to do is just remind the committee that although there are some significant decreases in the budget, I would like to note that there are also some changes in priorities and some significant increases in a couple of areas. One of those I would like to point to is global climate and global change, where we have increased that by $11 million to a total of $20 million. Last year, it was $9 million. I would like to point out that interestingly enough, that is the result of NOAA's budget being looked at and crosscut by OMB with EPA, the Department of Energy, National Science Foundation, and others, and that resulted in an increase in the budget.

The other increase we have is $12.4 million, which is for the coastal ocean program, which is an attempt to refocus some of our energies and some of our people in the ocean area, which, as you, Mr. Chairman, have said very many times, is an area where there is a noted deficiency in NOAA. We have tried to address that issue under the rather severe fiscal constraints that we do have.

In addition to that, we have continued, even with the rather startling cost of hardware, the modernization of the Weather Service. We think we are still going in that direction, maybe not as rapidly as we would like to go or you would like to see us go, but we are going in that direction.

I think those really represent the major changes in this budget over budgets that we have had in the past. So with those general summary statements, I think that we could probably best use our time, with your permission, Mr. Chairman, to open it up to questions that you and the Senator may have on the budget.

COASTAL OCEAN INITIATIVE

Senator HOLLINGS. In the book "Our Changing Planet," NOAA has no funds for fiscal year 1990 for global change research in the area of ecological systems. NOAA is the agency with the prime responsibility for assessing the marine environment. How do you explain that omission?

Dr. EVANS. It may not have, by name, in terms of working at the ecological type of budget, but it is one of the strong portions of the coastal ocean program. I think one of the things that I would like to mention is that although the coastal ocean program is not listed this year as a crosscut as the climate and global change program is, hopefully, in future years, that is something that would happen with the carry-on of that program, because it is, indeed, a crosscut.

In fact, a lot of the money that is going there is looking at ecosystems both in the estuarine areas as well as the coastal areas. We can't really separate the oceans from the atmosphere. Most of the programs that we have combine both of those components, and a lot of our base programs have been shifted to increase these programs.

As an example, we have now shifted the whole approach in fisheries management over what we have used in the past. That is not something that shows up in the budget, per se, but what we have done is that, for instance, with changes in Magnuson Fisheries and Conservation Act, habitat is a very important part of that. All of the fishery management plans do address issues of habitat, and so we are changing our priorities and our focus.

I know that doesn't address the fiscal problem, but I think it does address the problem of our wanting to address some of these very severe problems that we do have as far as what is happening to our climate and our environment, both in the short term as well as in the long run.

FISHERIES OBSERVER PROGRAM

Senator HOLLINGS. Now, in the area of fisheries, the tuna fishermen, they have been awaiting observers. Every day they are tied up, they lose $400,000 a day, and I understand there are no funds to pay for observers. They are going to stop very shortly and start losing that $400,000 a day. What can we do?

Dr. EVANS. We have sent a reprogramming over to OMB to shift some funds within the National Marine Fisheries Service to provide the money that is necessary to provide 100 percent observers, which is the desire of the judge. That reprogramming is at OMB right now. We are sort of at the whims of what the judge tells us to do. If we get the reprogramming, we will be in fine shape. If the reprogramming does not go through and the judge tells us that the ships can't go without observers, then we will have to sit down very seriously and negotiate with the fishermen on how we are going to be able to get the funds to do that.

The last thing in the world I want to do is to hold that fleet at the docks. It is probably one of the most valuable fleets that the United States has right now. It is the only truly international fleet that we do have. I think that we need to do everything we can to get it going.

VALDEZ OILSPILL

Senator HOLLINGS. We already have a reprogramming to hold our NOAA fleet at the dock. Right when we get an added responsibility at Valdez; we tie up four vessels. Where is the money coming from, and where are the vessels? What is your responsibility up there? How about generally telling the committee what NOAA expects to do with respect to the Valdez spill and how you intend to cope with it with less vessels and no money.

Dr. EVANS. I am going to steal a little bit from Secretary Skinner's comment that he made in the hearing that I participated in with the committee not too long ago when he said that our first responsibility is to provide the resources to Admiral Yost to do what we can to work with that problem up there, and we will worry about the funding later.

Exxon has come across and basically is picking up the funding for tests. Actually, I am having trouble figuring out which ships we do have, because we have been putting them back in to work up in Valdez about as fast as we were decommissioning them on the other side. So we have at least four ships up there now. We may have one more. We have got the *Cobb* and the *Fairweather*. We are going to have the *Ranier* up there, and I believe we have one other research vessel, a fisheries vessel that is up there working on the spill right now.

Senator HOLLINGS. So you study the spill, and what happens? Do we study it 1 year, 2 years, 5 years? What do we get? How many vessels, and what is the effort?

Dr. EVANS. Mr. Chairman, I told the fisherman up there, I also told the Governor, I also told a number of people on behalf of the Secretary of Commerce that NOAA was there for the long run. We are going to be there as long as there is a problem, a perceived problem.

Our responsibility is to do two or three things: One, to work in any way we can to mitigate what the effect of this rather disastrous spill has been, and in addition to that, of course, we have the legal responsibility of going up there and figuring out what the bill is going to be.

We are in the process of doing the damage assessment, working with the other three trustees to try to come up with what the cost of that will be. But at the same time, one of the reasons that our fisheries vessel is up there is that we are trying to gather as much background information on the status of the larval fish, how the larval fish are doing. You know, that pollack fishery up there is, as you have heard from Senator Stevens many, many, times, a multi-billion dollar resource. So we are up there looking at the pollack fishery. We have got techniques now where we can look at the larval pollack and by using DNA and other rather elaborate techniques, we can determine whether or not those larvae are feeding. If they are not feeding, then that means that we have got some sort of a problem in terms of the availability of food, and we know that that is going to have a rather serious effect on the fishery.

Senator HOLLINGS. How about availability of oil? We went to Senator Steven's salmon dinner last night. I told him I wanted the unleaded. How does the public generally know not to eat salmon, I guess, for the next year or how long or whatever, or how can I tell, in other words, that it is good?

Dr. EVANS. The State of Alaska, by the way, has responded. First of all, they probably have one of the best seafood quality programs of any State. It would be an excellent model for a number of other States. They are setting up a process where they are going to be sampling fish and sampling shellfish to determine that there are no effects on that. We are going to watch that very closely. We are going to work with them. We will also have some of our seafood quality people very much involved in that program. We are very concerned about that.

One of the reasons that we are looking at what is in the water column in terms of the various kinds of toxins that come out of these very heavy hydrocarbons that are present, is to see if there is something going in the water column. So far we haven't seen anything. That doesn't mean that it will not happen, but we are working very close with that.

Senator HOLLINGS. Senator Rudman?

GOES CONTRACT OVERRUNS

Senator RUDMAN. Mr. Chairman, thank you.

I wonder if we could talk a bit about the geostationary satellite contracts, because they are a bit disturbing to the subcommittee. The initial value of the contract of December 1985 with Ford Aerospace was $276 million. We are now estimating, according to the contractor, a cost of $515 million, which is a cost overrun of $239 million on a contract with a base of $276 million. I almost thought when I looked at it that we were dealing with a DOD item.

Those kind of overruns you don't find generally in the Government. I understand we have asked the GAO to investigate the contract, the chairman and I, so there are a lot of questions for the record.

I don't know how explicit we can get here today or how much information you have, but our understanding is the primary cause is problems encountered by ITT, which is the Ford Aerospace subcontractor in the area of instrumentation.

I wonder if you could tell us what that is, if you know. Second, we understand it is common operating procedure when preparing a new series of satellites, to enter what is called—and you will have to define this for me—a phase B process, which involves detailed program definition and how it is progressing.

Although NASA has been the contracting officer, we understand that NOAA officials decided to skip phase B, maybe for good and valid reasons; I don't know. So my questions are: Why are we experiencing this kind of an overrun, which is nearly an 80-percent overrun?

Second, why were the phase B studies dispensed with, and did that have some effect on the answer to my first question?

Dr. EVANS. Senator Rudman, let me address it in two phases. The one phase, the second phase, which is the technical aspects of it, I would like to refer to Tom Pyke, because he has been overseeing that contract. I would like to make a couple of comments expressing some of my personal feelings about this.

I think one of the most dismaying things to me upon taking the helm of NOAA as the Administrator 1 year ago and even before that when I was with fisheries as an Assistant Administrator, was the fact of the cost overrun.

I have worked with DOD and used to work with the aerospace industry. I am used to, when you do this and you are trying to buy a piece of hardware that you are going to use, getting a fixed-price contract.

One of the first things I started and tried to do was to push very hard to get a fixed-price contract. I am very concerned and very disappointed that during the year that I have had here I have been unsuccessful in getting that. I was hoping that before I left this office I would have in hand a fixed-price contract to stop this overrun that we are having, which seems to be something that is built in to doing a cost-plus contract.

If you enter into a cost-plus contract in the aerospace industry, you almost guarantee that you are going to have cost-plus. It is a habit. I think it is part of the rule of the game or something. It shouldn't be that way.

In reference to ITT, in fairness to Ford and others, I think they have tried to work with that, but I think we have just had a lack of management in the early stages. I think that NASA, in some cases, has improved some of that. We have had to go through some procedures of descoping; that is, cutting out some of the bells and buzzers and things that we had on the system.

The system was maybe a little bit too complicated, too fancy, too much for what it was we really needed to do. It is a very serious problem. We have been promised by NASA and by Ford Aerospace, that they are going to get a fix on this.

I know that this was a very serious concern of former Secretary of Commerce Verity, and he has expressed it many times.

What I would like to do now is turn to Tom Pyke to explain to you phase B and that function.

GOES MANAGEMENT

Senator RUDMAN. Fine. Before you do, I would just make an observation. The observation I would like to make is that we sit here as a committee with funding assumptions as we look at these programs in the out-years. We are given a figure of $276 million, and we figure that in current dollars, and we then assume what our allocations are going to be.

Now we find that rather than costing $276 million in 1985 dollars, we are looking at $515 million or more. I would point out that it would fund sea grant for 6 years, 6 years, this one overrun. This is a relatively small part of our budget allocation. This error, which I don't blame on you, certainly; it is not your fault. I understand that. This happened long before you came on board, but the fact is that this is going to cause, in my view, a tremendous dislocation within existing programs due to the budgetary situation that we are now facing—not necessarily just in NOAA, but maybe in Commerce generally.

I did not bring this up with Secretary Mosbacher, because I thought I would talk to you about it first. I would like to talk to Commerce and to your successor whoever that might be, because I think it is a very disturbing thing. This subcommittee is going to have an allocation from the Budget Committee and I think we know pretty much what it is going to be. It is going to be very hard to accommodate a $250 million overrun in such a small agency.

So I just want to point out that this is a very serious matter. Obviously, we could always say, "Well, we are not going to have the five GOES satellites," but that is unrealistic. We are going to have to have those geostationary satellites. So we are going to have to pay for them. I am afraid that some very good programs are going to pay for them—programs in South Carolina and in New Hampshire, in New York, New Jersey, California, Alaska, and so forth.

It is really quite unfair. It has got no equity behind it whatsoever. When you talked about poor management, were you talking about management by NASA or by the contractor?

Dr. EVANS. I think I meant that more in a generic sense.

Senator RUDMAN. Generic to whom?

Dr. EVANS. NASA, the contractor, a number of others. I think it was not a high-priority item when it first started out, and I think NASA had—I am not criticizing them in any way—but it was just here on the priority list, and it should have been up here on the priority list. I think we are there now, but as I said, the barn door has been opened.

Senator RUDMAN. I always have a terrible suspicion when we have this kind of overrun in any Government procurement that people bought in at an unreasonable number. I find it hard to think that in the age of the proliferation of MBA's everywhere, with all of their wonderful computer models of studying costs, that anybody could make a $250 million error within a 3-year period. They say it is going to cost *x* in 1985; it turns out to be *x* times 180 percent.

I have some good-faith questions about this, and I may ask the chairman to call in these contractors and NASA for a special hearing. We may have GAO get permission to do some auditing of their books and their original bid records, because I think maybe we have been had here.

I don't believe that anybody can make a $250 million error on a $276 million contract in good faith. That may be a pretty scathing statement, but I intend it to be one.

Mr. Chairman, I think we ought to look at it, because what is going to happen is all of these programs are going to suffer because of this error, and I am not sure it was an error.

I wonder if you could answer the balance of my questions.

Dr. EVANS. Senator, I think that on this point, NOAA will be more than willing to participate.

Tom?

DEFINITION OF GOES REQUIREMENTS

Mr. PYKE. Senator, we are all very concerned about the cost increase on those contracts.

Senator RUDMAN. Could you identify yourself for our stenographer?

Mr. PYKE. I am Tom Pyke, the Assistant Administrator for Satellite and Information Services.

We are all very concerned about the cost increase on that contract. This development, the new series of GOES spacecraft, the new series, began several years ago with the definition of requirements so as to meet critical National Weather Service and other needs for forecasting in the 1990's. Those requirements were well set out, and we worked very closely with NASA as we have in the past in having those requirements turned into specifications, which were then bid against by the private sector.

In the process, the estimates that were made, both by NASA and by the contractors or the organizations that bid on these contracts, including the organization that was given the contract, both severely underestimated the amount of work that would be necessary to develop spacecraft that would meet those requirements.

As a result, when the contractor got well into that work, the cost began to increase. I should point out that it was in the interests of maintaining continuity of GOES service, with the confirmed concurrence of both NOAA and NASA, in order to move that project ahead back in the early eighties some of the preliminary steps were skipped over. That would have been an indication, in our judgment, of the magnitude of the cost.

Senator RUDMAN. Who made those decisions to skip over the normal processes?

Mr. PYKE. Those decisions, sir, to skip over what is a usual process for this kind of a procurement were made by NASA and with NOAA's concurrence. They were reflected in the budgetary estimates. It was felt, at that time, sir, that the program could move ahead and that in order to better define how the requirements would be met, the approach that NASA chose was to develop a casting process for the contractor and to postaward to better define and better scope certain requirements for the spacecraft. That process was followed and resulted in later estimates that now have themselves been well exceeded as the contract cost has grown.

Senator RUDMAN. Was there any new technology that we needed? Were we pushing state-of-the-art technology? Were we inventing new things? Were there breakthroughs that had to be made? We experienced this in some classified defense programs. I mean, did the technology exist for what you were trying to do, or were there going to have to be breakthroughs in technology, not an application of technology, but in technology to get this done?

Mr. PYKE. It is my understanding, Senator, that there were no breakthroughs in technology required, but we were very much pushing the state of the art, if you like, the state of the practice in terms of the construction of the satellite and especially the instruments to have the pointing accuracy and the other characteristics necessary to meet the requirements that were set out.

It was the judgment of NASA and of the contractor and with our concurrence at that time that those requirements could be met within the budget that had been put forth at that time. The number that you have, sir, the $276 million number, although technically correct as the original contract value, was not the number that was factored into even the first budget estimates.

The actual estimates that NASA made and that we used as a basis for budgets took into account that this was a cost-plus contract; took into account that the number for the original contract did not reflect the expected amount of work to be conducted on the contract.

Despite that fact, there has been substantial cost growth, and although the fiscal 1990 budget, which is before us today, does not reflect a substantial amount of growth on the spacecraft, there is a total growth in the runout of the spacecraft line on the order of $200 million above that based on previous estimates that were done.

Senator RUDMAN. This does not include launch costs; is that correct?

Mr. PYKE. That is correct, sir.

Senator RUDMAN. Well, I don't want to continue this. Senator Bumpers is waiting, and I am sure he has questions, and I know the chairman has other questions. But I find a lot of things disturbing about this. I will just simply state again for the record that I don't think this kind of error can be made totally with innocence in the technical environment that we live in, and I would ask one other question.

Is this program or any parts of its instrumentation or pointing capability classified?

Mr. PYKE. No, sir; it is not.

SHARING TECHNOLOGY

Senator RUDMAN. It is not classified. Do you happen to know if there was any effort by NASA or by NOAA to work with other agencies, with DIA, in particular, the National Reconnaissance Office, in particular, to share technology that we currently use in other programs and possibly not reinvent the wheel.

Can you let me know if that was done?

Mr. PYKE. No, sir; but we are talking about the kinds of technology here that are applicable for meteorological satellite development, and we are talking about drawing on the same private sector that develops capabilities for the military as well as to meet our civilian meteorological requirements.

If I may, sir, point out that since we learned of the estimates of substantial cost growth on this contract, we, together with NASA, have taken some very significant steps to increase the amount of NASA staffing involved in overseeing this contract.

We directed that this contract be capped, and NASA has followed that guidance. As Dr. Evans has said earlier, we are not pleased that it is going to take longer to cap the contract than what we had hoped for, but we are taking those and many other steps in order to try to bring this contract under control.

Senator RUDMAN. Thank you.

Mr. Chairman, I will leave it to your good judgment in terms of what we ought to do in terms of inquiries. I just think that in one way or the other, we might want to have a study. After that is done, I dare say that we might want to have some of these folks down here and have a chat with them.

Senator HOLLINGS. I have some real concerns about NOAA satellite development and will work with you on trying to sort this thing out.

Senator Bumpers?

NATIONAL WEATHER SERVICE MODERNIZATION PLAN

Senator BUMPERS. Thank you, Mr. Chairman. Dr. Evans, in your statement here, you say, "During 1990, NOAA will continue progress toward a modernized and restructured National Weather Service—" et cetera. "We will continue development of a cost-effective replacement for the National Weather Service current information process and communication system."

You mentioned the next generation NEXRAD. My question is the people in Fort Smith, AR, which is a town of about 100,000 people, insist that this system is not going to protect them from tornadoes, and they say that the system is going to be monitored and operated out of Tulsa. They also say there are some mountains southwest of Fort Smith, and of course, our tornadoes all come from the southwest or northeast. They are sorely afraid that this system is not going to give them the kind of protection they need.

You have your weather expert with you. I would be glad to hear from him, and if you don't, I would like you to answer this question by letter at the earliest possible time.

Dr. EVANS. We will do that and one other thing. I just wanted to make one statement, is that I will ask for further detail. Dr. Friday is right behind me here, and he will address it in some detail.

The system that we do have, though, not regarding the mountains and the other things, is a very sophisticated system. It has been demonstrated, at least to me, anyway, in terms of being bolder than saying a similar kind of system or saying how it works with tornadoes, at least in an area like Boulder, compared with the old system we have in North Carolina, which everybody knows the outcome of that.

In the case of Boulder, we now have warnings that that was happening in specific areas where tornadoes were going to happen. So I think that the system and what it can do, at least to me, is very exciting, and whether or not it can do it in Fort Smith is a specific question, and I would like to refer that to Dr. Friday. He is smiling. He may have to answer it in writing.

Dr. FRIDAY. E.W. Friday, Director of the National Weather Service. Sir, the question about support for the organized weather service in many sections of the country, and certainly, the strategic plan, has been submitted to Congress in the past 3 months. I have had discussions with many different groups over here on the Hill asking the same sort of questions that your people from Fort Smith are asking.

Since I was born in the southwestern corner of Arkansas, I am aware of the terrain and everything else in that area.

Senator BUMPERS. That is tornado alley.

Dr. FRIDAY. And the environment. I still have relatives there, so I am a little concerned about that.

Senator BUMPERS. I would like to have their vote there. [Laughter.]

MODERNIZING WEATHER SERVICE

Dr. FRIDAY. The situation, however, is, as Dr. Evans pointed out, not just simply a radar system, but it is a very carefully integrated system for modernizing the Weather Service across this entire Nation. It is using the next generation of geostationary satellites that we discussed earlier.

It is using the next generation of weather radars to form a network across the country. It is using the AWIPS system, the advanced weather interactive processing system that we described in the testimony, as a way of bringing these data together and providing the ability to forecast these severe activities much better than we have ever done before.

Dr. Evans witnessed this in action and, indeed, the statistics for what we have been able to do with the prototype equipment in Oklahoma City and the ~~prototype~~ equipment in Denver are very impressive.

Now, there is a safety feature in this whole process. A law passed in the last session of Congress that requires that before we phase out an office, for example, like Fort Smith, that we have clear and incontrovertable evidence that we will not be degrading the services to that particular segment of the State.

The Secretary of Commerce is required to certify, before we do any of these changes in our present operation and structure, that there is enough conclusive data to show that there will be no deprivation of services. So our job in the National Weather Service is to implement this system across the country and to ensure that it works as advertised and it works as we believe it is going to.

I am absolutely certain that the system at Fort Smith and the other portions of Arkansas are going to be watching very carefully to make sure that we do, indeed, evaluate that capability before we make any changes.

So what I am saying is that we believe we have a good, solid plan. We believe we have a good, solid plan for the protection of all parts of the country. There are some questions that some people have raised. Before anything is done to change the present method of operation in those areas, we will have to go through and prove that, indeed, we are not harming that particular section of the country.

Senator **Bumpers**. Well, do you have some maps and graphs——

Dr. **Friday**. Of course, yes.

Senator **Bumpers** [continuing]. In your plans, which would show the geography of the United States and how you intend to cover it? Perhaps it would be good for you to come over some time.

Dr. **Friday**. All right, sir.

Senator **Bumpers**. And visit with us and show us precisely what you intend to do. We have a parochial interest in the station there, of course. We would be most reluctant to see it phased out, but the main thing we are concerned about is the safety of the people. There are probably a dozen tornado warnings and probably three or four tornado alerts every year in that area. People are terrified, as they are in southwest Arkansas, on certain kinds of days during February, March, April, and May.

So I wanted to make you aware of my concerns, and we will visit further about it then.

Dr. **Friday**. All right, sir.

STUTTGART FISH FARMING EXPERIMENT STATION

Senator **Bumpers**. Dr. Evans, the other thing is yesterday, Secretary Mosbacher said he had not asked for any money for EDA but he expected to get it. [Laughter.]

Indeed he will, won't he, Mr. Chairman?

Senator **Hollings**. Yes; Mr. Chairman. [Laughter.]

Senator **Bumpers**. Every year you people come over here, and you don't ask for any money for the Stuttgart Fish Farming Experimental Station, but I certainly expect you will get it, and you will. [Laughter.]

But my question is not whether you are going to get it or not. We are going to give it to you. I am concerned because in 1988, we appropriated $941,000 to begin a new research laboratory of which NOAA didn't spend a dime, and the Commerce Department didn't spend a dime—refused to spend it. And then last year, we reappropriated that money from 1989 plus an additional $1 million for beginning construction of a bench laboratory.

We have economic data that shows that this laboratory station is the biggest of its kind in the country and has a 100-to-1 cost-benefit ratio. It seems to me that those are the kind of benefits this administration needs. It is like childhood immunizations. It is about a 10-to-1 ratio, and they don't ask for a dime for inner-city children or hepatitis vaccines or anything.

But in this particular case, I would like to ask you if you know what has happened to the $1,941,000 we appropriated for that station?

Dr. **Evans**. I will refer that to Jim Brennan, because he is better acquainted with this.

Senator **Bumpers**. Where is old Jim? [Laughter.]

Dr. **Evans**. Old Jim is right back here.

Senator **Bumpers**. Let's hear it, Jim.

Dr. **Evans**. Before I do that, Senator Bumpers, since I am going to a sea grant facility, which is very heavily involved in all kinds of aquaculture, both freshwater and otherwise, it probably would not be wise for me to say some of the things I probably will say, so I will turn that over to Jim Brennan, and he can respond.

Mr. **Brennan**. Jim Brennan, Assistant Administrator for Fisheries.

I understand that architectural engineering studies are underway, and we are negotiating and discussing with the Department of the Interior, who is actually doing the work. I can give you something for the record on the exact status of that.

Senator **Bumpers**. Would you do that please?

Mr. **Brennan**. Certainly.

[The information follows:]

Status of Stuttgart, AR, Conservation Funds

Of the $1,941,000 appropriated for construction at Stuttgart, $941,000 was obligated to the Department of the Interior in fiscal year 1988. The fiscal year 1989 appropriation of $1 million will be obligated in May. The status of the projects is as follows: Conceptual study has been completed; construction costs will be developed by July 1989; preliminary solicitation will be completed by November 1989; and documentation and design of facility will be ready for bid release by March 1990.

L.J. HOOKER DEVELOPMENT PROJECT

Senator **Bumpers**. Thank you, Mr. Chairman.

Senator **Hollings**. On the L.J. Hooker project on Hutchinson Island, can you get that study out for us, Dr. Evans?

Dr. **Evans**. Yes, sir.

[The information follows:]

L.J. Hooker Development Project

The NOAA General Counsel (NOAA GC) has carefully considered the legal issue of whether, pursuant to section 307(c)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), one State can review for consistency with its federally approved coastal management program an activity requiring a Federal permit or license if that activity, although occurring totally within another State, affects land or water uses in the coastal zone of the reviewing State. Based on the legislative purpose and intent of the CZMA, coupled with NOAA's long-standing regulatory interpretation and implementation, the GC concluded that such review is permissible if the reviewing State satisfies all of the procedural requirements outlined in 15 C.F.R. 930, Subpart D, "Consistency for Activities Requiring a Federal License or Permit."

[NOAA's legal opinion and letters of transmittal follow:]

May 2, 1989

Lester Edelman, Esquire
Chief Counsel
U.S. Army Corps of Engineers
CE-CC-ZA
20 Massachusetts Avenue
Washington, D.C. 20314-1000

Dear Mr. Edelman:

NOAA has carefully considered the legal issue of whether, pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, one state can review for consistency with its federally-approved coastal management program an activity requiring a Federal permit or license if that activity, although occurring totally within another state, affects land or water uses in the coastal zone of the reviewing state. Based on the legislative purposes and intent of the CZMA, coupled with the National Oceanic and Atmospheric Administration's long-standing regulatory interpretation and implementation, we concluded that such review is permissible if the reviewing state satisfies all of the procedural requirements outlined in 15 C.F.R. § 930, Subpart D, "Consistency for Activities Requiring a Federal License or Permit."

As part of our deliberative process, we consulted with the Department of Justice. As you are aware, the Justice Department declined to endorse our interpretation and reiterated the position that it asserted in 1986. However, since NOAA is the agency responsible for implementation of the CZMA, we strongly believe that, the Justice Department's legal position notwithstanding, we would be remiss in our responsibilities for implementing that Act if we were not to issue this legal opinion. Therefore, I am enclosing a copy of our opinion for your consideration.

Turning to the LJ Hooker Developments proposed project (Corps Permit 074-OYN-006742), we believe that the project will directly affect the water quality of the coastal zone of South Carolina due to the type of proposed activity and its proximity to the South Carolina state boundary. We also have determined that the South Carolina Coastal Council's (Council) objection to the issuance of the Corps' permit meets all of the procedural requirements of section 307(c)(3)(A) and the Department's implementing regulations. The Council's objection letter of October 18, 1988 was timely in response to the Corps' Public Notice and specifically described how the proposed project was inconsistent with the mandatory, enforceable policies of the South Carolina Coastal Management Program (SCCMP). The letter described a number of alternatives which would permit the proposed activity to be conducted in a manner consistent with the SCCMP. Finally, the Council properly informed the applicant of its right to appeal the objection to the Secretary of Commerce.

If you wish to discuss this matter further, please contact me at 377-4080.

Sincerely,

Timothy R. E. Keeney

Timothy R. E. Keeney
General Counsel

May 2, 1989

Donald A. Carr, Esquire
Acting Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Don,

We have considered carefully the comments that you provided on our draft legal opinion concerning whether one state can review for consistency a federally permitted activity occurring totally within another state pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA). We also have discussed this issue and your comments with Department General Counsel Wendell Willkie and members of his staff. Based on that discussion, we decided to issue the legal opinion requested by the U.S. Army Corps of Engineers.

While we agree with you that the question is a close one when one examines only the language of the statute and the legislative history of the CZMA, we believe that our position is the better view based on the intent of the CZMA and NOAA's long-standing interpretation and implementation of this provision. As you are aware, Congress, after considerable debate, vested NOAA and the Department of Commerce with the responsibility for implementing the CZMA. Over the years, we have taken that responsibility seriously and have endeavored to implement the coastal zone management program in conformance with Congressional mandates. Because this legal issue is an important one to NOAA, coastal states and Federal permitting agencies, we feel that we would be remiss if we failed to issue this legal opinion.

Sincerely,

Tim

Timothy R. E. Keeney
General Counsel

May 2, 1989

Issue

Pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), can one state review for consistency with its Federally-approved coastal management program an activity requiring a Federal permit or license if that activity, although occurring totally within another state, affects land or water uses in the coastal zone of the reviewing state?

Answer

Yes. The legislative purpose and intent of the CZMA, coupled with the long-standing regulatory interpretation and implementation by the National Oceanic and Atmospheric Administration (NOAA) support review pursuant to section 307(c)(3)(A) of the CZMA by one state for consistency with its Federally-approved coastal management program of an activity requiring a Federal permit or license if that activity, although occurring totally within another state, affects the land or water uses in the coastal zone of the reviewing state.

Background

During the late 1960's and early 1970's, Congress considered a number of bills establishing comprehensive national land use planning. Of particular concern was shoreline areas. Triggered by the report Our Nation and the Sea: A Plan for National Action (1969)(Stratton Commission Report) which detailed the unique problems of coastal areas and made specific recommendations, the House of Representatives (House) and the Senate proposed legislation focusing on coastal zone management. As stated by Representative DuPont during adoption of the Conference Report for the Coastal Zone Management Act of 1972:

> The coast of the United States and the adjacent waters represent one of this Nation's most precious resources, yet this resource has been subject to drastic degradation and uncontrolled development. While we all recognize the necessity of implementing a rational policy for the usage of all our lands, the coastal zone perhaps is the most endangered area and needs top priority.
>
> CONG. REC. H9801 (daily ed. Oct. 12, 1972)(statement of Rep. DuPont).

The resultant legislation is basically a "water-related" coastal management program involving land use decisions. Recognizing the uniqueness of the coastal zone and the increasing and competing demands being placed on this area, the CZMA is designed to:

- preserve, protect, develop and enhance coastal zone resources;
- encourage states to develop coastal management plans that:
  - protect natural resources
  - manage coastal development
  - give priority consideration to coastal dependent uses
  - provide public access
  - assist in redevelopment of deteriorating urban waterfronts and ports
  - preserve and restore historic, cultural and esthetic coastal features
  - simplify and expedite governmental decisionmaking
  - allow public and local government participation
- encourage preparation of special area management plans.

Sections 302 and 303.

During passage of the CZMA, Congress did note that upon enactment of national land use legislation, changes would be made in the states' coastal zone programs to conform with land use responsibilities. H.R. CONF. REP. NO. 1544, 92d Cong., 2d Sess. 13 (1972). No such national land use legislation has been enacted.

Congress focused much attention on the definition of the coastal zone. While the seaward boundary was quickly settled at the then three mile territorial sea of the United States, the inland boundary generated more discussion. For example, when sponsor Senator Tower introduced S. 638, he stated that the coastal zone would extend inland approximately fifty miles from the coast.

CONG. REC. S958 (daily ed. Feb. 8, 1971)(statement of Sen. Tower). On the other hand, S. 582 established the inner boundary at seven miles from the mean high water line (although this boundary could be extended if it divided a political subdivision of a state). The intent behind this seven mile boundary was to define the inner boundary specifically to avoid overlap when Congress enacted national land use policy legislation. S. REP. NO. 526, 92d Cong., 1st Sess. 20-21 (1971). Ultimately, the Congress opted to keep the landward boundary flexible and to permit each state to define its own inner boundary. Thus, the CZMA defines the inner boundary of the coastal zone as "inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." Section 304(a).

A state's definition of its coastal zone is important for two purposes under the CZMA as originally passed. First, it established the geographic area for which the state must develop a management plan. Second, it is the key concept for the Federal consistency provisions of section 307.

To encourage states to participate in the voluntary coastal management program, the CZMA offers two incentives - Federal matching funds for program implementation and Federal consistency. Federal consistency allows states to review direct Federal activities as well as private activities requiring Federal licenses or permits for consistency with a state's Federally-approved coastal management program. A state may object to those activities that it finds "inconsistent." See section 307(c). Echoing the sentiments of others, Senator Williams observed during consideration of S. 586 (a bill to amend the CZMA) that "[t]his 'consistency' provision is the key to a successful State program for coastal zone management." CONG. REC. S12811 (daily ed. July 16, 1975)(statement of Sen. Williams).

Discussion

An examination of the various bills considered by the House and Senate reveals several proposed approaches to the consistency provisions, particularly to section 307(c)(1), direct Federal activities, and section 307(c)(3)(A), Federal licenses and permits (unless noted otherwise, statutory references are to the CZMA as amended). Some bills, which were considered but not passed, such as H.R. 9229, S. 638 and S. 582 limited the scope of sections 307(c)(1) and 307(c)(3)(A) review to activities occurring in a state's coastal zone. Section 307(c)(1), as reported and passed in both the House (H.R. 14146) and Senate (S. 3507), referred to "activities in the coastal zone."

> Each Federal agency conducting or supporting activities in the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state programs.
>
> H.R. 14146, 92d Cong. 2d Sess., § 307(c)(1)(1972)(emphasis added).
>
> All Federal agencies conducting or supporting activities in the coastal zone shall administer their programs consistent with approved state management programs except in cases of overriding national interests as determined by the President.

> S. 3507, 92d Cong., 2d Sess., § 314(b)(1)(1972)(emphasis added).

The "directly affecting" language of section 307(c)(1) did not appear until the bills reached the Conference Committee. As reported out, section 307(c)(1) read:

> Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.
>
> H.R. CONF. REP. NO. 1544, 92d Cong., 2d Sess., § 307(c)(1) (1972)(emphasis added).

The legislative history of section 307(c)(3)(A) differs. Senate Bill 3507 provided, in part, that "any applicant for a Federal license or permit to conduct any activity in the coastal and estuarine zone ...." (emphasis added). In contrast, H.R. 14146, as originally reported, stated that section 307(c)(3)(A) applied to "any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone." (emphasis added) This wording was unchanged in the bill passed by the House, and the Conference Committee adopted it verbatim.

The legislative history at the time of passage of the CZMA offers no specific explanation for the wording of § 307(c)(3)(A). Unlike section 307(c)(1), there has been no judicial interpretation of the geographic scope of review available pursuant to section 307(c)(3)(A). Some attempt has been made recently to draw an analogy between section 307(c)(3)(A) and the scope of section 307(c)(1) as considered by the Supreme Court in Secretary of the Interior v. California, 464 U.S. 1065 (1984) (OCS oil and gas lease sales not subject to consistency review). The Court does not address section 307(c)(3)(A) activities. Shortly after the issuance of this decision, a representative of the Department of Justice testified that:

> We do, indeed, interpret the Supreme Court's decision narrowly. We believe that what the Supreme Court addressed was Outer Continental Shelf lease sale activities. Other OCS activities, exploration, development, and production, would be found in section 307(c)(3). So the Supreme Court decision affects only the lease sale activities and section 307(c)(1).
>
> CZM Federal Consistency: Hearings on H.R. 4589 Before the Subcomm. on Oceanography of the House Comm. on Merchant Marine and Fisheries, 98th Cong., 2d Sess. 608 (1984)(statement of Carol Dinkins, U.S. Deputy Attorney General).

The Justice Department conveyed a similar position to NOAA during a rulemaking to conform 15 C.F.R. Part 930, Subpart C, "Consistency for Federal Activities," to the Supreme Court decision. The Justice Department cautioned that "a total exclusion for all federal activities on the OCS (or landward of the coastal zone) may well be reading more into the Court's opinion than is there, and therefore may sweep more broadly than necessary." Letter to Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management (OCRM), from F. Henry Habicht II, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, dated February 28, 1984. Following this advice, NOAA limited its regulatory changes to provisions involving OCS oil and gas lease sale activities. 50 Fed. Reg. 35213 (Aug. 30, 1985).

Because of this narrow interpretation of Secretary of the Interior v. California, an extension of its rationale to section 307(c)(3)(A) activities is unwarranted. The Justice Department, however, has filed a brief in Federal district court that questions the applicability of section 307(c)(3)(A) to an activity landward of a state's coastal zone. The case involved a Corps of Engineer's decision to issue a permit to the City of Virginia Beach to construct a water intake structure and pipeline in a tributary of Lake Gaston. Lake Gaston is located in Virginia and North Carolina. One of North Carolina's challenges to the decision involved compliance with the requirements of section 307(c) of the CZMA. See North Carolina v. Hudson, 665 F. Supp. 428 (E.D.N.C. 1987)(Federal Defendants' Memorandum in Support of Motion for Summary Judgment, filed May 27, 1986). Justice based support for this position on two excerpts from the 1972 legislative history of the CZMA. The first excerpt related to the Senate's version of section 307(c)(3)(A) ("any activity in the coastal and estuarine zone"), which was not adopted by the conferees. The second is a brief reference in the report on H.R. 14146 which, in explanation of section 307(c)(3)(A) mentions Federal licenses or permits in the coastal zone -- a contradiction to the plain language of the bill. Because North Carolina dropped the consistency claim due to procedural questions, the court never reached the issue.

It is likely, however, that the House included the "activity affecting land or water uses in the coastal zone" language in section 307(c)(3)(A) to ensure consistency review for Federally licensed or permitted activities that, although not occurring in the coastal zone, affect land or water uses in the coastal zone. To hold otherwise would render the "affecting" language meaningless, a result not favored in statutory construction. See United States v. Wong Kim Bo, 472 F.2d. 720, 722 (5th Cir. 1972)("Words in statutes should not be discarded as meaningless and surplusage when Congress specifically and expressly included them, particularly where the words are excluded in the other sections of the same act.")

This interpretation is bolstered by several other factors -- recognition by Congress that activities outside the coastal zone can adversely impact the coastal zone; subsequent legislative history; and agency interpretation.

During consideration of the various coastal zone management bills, Congressmen and witnesses at hearings acknowledged that coastal zone problems and impacts from activities do not recognize jurisdictional boundaries:

> "Pollution and degradation ... knows [sic] no artificial barriers such as ... political boundaries."
>
> Coastal Zone Management: Hearings on H.R. 2492, H.R. 2493 and H.R. 9229 Before the Subcomm. on Oceanography of the House Comm. on Merchant Marine and Fisheries, 92d Cong., 1st Sess. 126 (1971)(statement of James T. Goodwin, Coordinator of Natural Resources).
>
> "We know that filling in an estuarine marsh in one place may affect the fisherman's catch miles away; a chemical factory at one location can affect the quality of recreational beaches somewhere else; a marine [sic] built at point A could wipe out a productive shellfish bed at point B."
>
> CONG. REC. H7093 (daily ed. August 2, 1972)(statement of Rep. Keith).

> "Individual states are unable to solve the many complexities of coastal zone problems which cross political and geographic boundaries ...."
>
> Id. at H7095 (statement of Rep. Pelly).
>
> "Activities undertaken by other (non-coastal) states affect the waters draining into the coastal states."
>
> Letter from Comptroller General of the United States to Senate Comm. on Commerce, dated March 30, 1970, reprinted in S. REP. NO. 526, 92d Cong., 1st Sess. 46 (1971).
>
> [During discussion of offshore terminals located beyond three miles] [T]he facility would be outside the jurisdiction of neighboring States. Yet, the coastal zones of these neighboring States could be severely and adversely affected by pollution that might come from such an offshore facility. While such a pollution discharge would be subject to the cleanup provisions of the existing Federal Water Pollution Control Act, this might be insufficient protection for coastal States. Rather than protecting a State and its coastal zone subsequent to a discharge, I believe it is important that the affected States play a meaningful role in the plan to construct such a facility.
>
> CONG. REC. S6669 (daily ed. Apr. 25, 1972)(statement of Sen. Boggs).

Besides this general recognition of the transboundary nature of many coastal zone problems, subsequent legislative history supports the application of section 307(c)(3)(A) to activities occurring outside of a state's coastal zone. In 1975, Congress began consideration of various amendments to the CZMA, including one for section 307(c)(3)(A). The Senate noted that "[t]he provisions of section 307(c)(3) include instances where a Federal entity issues a license, lease, or permit for any activity in or out of the coastal zone which may affect the state's coastal zone." S. REP. NO. 277, 94th Cong., 1st Sess., reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 1804-05 (emphasis added). Reliance on more recent legislative history can demonstrate Congress' understanding of an issue and should be given weight in the search for legislative intent. See Andrus v. Shell Oil Co., 446 U.S. 657, 666 n. 8 (1980)(Subsequent legislative history should be weighed with extreme care but not rejected out of hand as a source that a court may consider in search for legislative intent.); Seatrain Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572, 596 (1980)("While the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, such views are entitled to significant weight and particularly so when the precise intent of the enacting Congress is obscure.").

NOAA has consistently interpreted section 307(c)(3)(A) as applying to activities landward or seaward of the coastal zone. This interpretation, as directed by Congress, emphasizes the effect of the activity on land or water uses of the coastal zone rather than considering only the location of the activity.

Section 317 of the CZMA directs the Secretary of Commerce to issue rules necessary to carry out the provisions of the CZMA. Although the Congress passed the CZMA in 1972, NOAA did not approve the first state coastal management program until June 1, 1976 (State of Washington). Due to the lack of approved plans, NOAA did not promulgate the Federal consistency regulations immediately. It was not until May 14, 1976, that NOAA solicited comments on draft consistency regulations. On that date, NOAA sent draft regulations to selected reviewers for their consideration prior to publication in the Federal Register. Reviewers included coastal states, relevant Federal agencies and the Advisory Commission on Intergovernmental Relations. That draft did not directly address the geographic scope of section 307(c)(3)(A), although by implication it appears to cover activities both inside and outside of the coastal zone. It stated:

> Any person who contemplates engaging in an activity which requires a Federal license or permit shall obtain the views of the relevant Federal agency and of the state agency as to whether such activity could affect such state's coastal zone. For the purpose of the initial contacts prescribed by this subsection, it is presumed that such an activity would affect such state's coastal zone if it is to take place within the boundaries of that coastal zone.

Based upon the comments received and further consideration of the draft regulations, NOAA published proposed regulations in the Federal Register on September 28, 1976 (41 Fed. Reg. 42878 - 42891). In the preamble, NOAA noted the conflicting views of Federal agencies and coastal states concerning the scope of consistency.

> The Federal agencies in many instances perceived a threat to their national mission objectives should States be permitted to frustrate Federal programs by virtue of the consistency requirements of the Act. Accordingly, the Federal community responses reflected a narrow view of the scope and impact of the consistency provisions. The State/local government community indicated a general concern with what it perceived as a Federal agency's effort to weaken and undermine the coverage of the consistency requirements, thereby diluting the effectiveness of State coastal zone management programs. Accordingly, the latter community requested comprehensive operational tools for enforcement of the consistency requirements.
>
> Id. at 42879.

NOAA attempted to address these concerns and others when proposing the regulations to implement section 307(c)(3)(A). The preamble stated that "[w]hile NOAA recognizes the impracticality of requiring States to review all Federal license and permit activities affecting the coastal zone, we note that the broad language of the Act reflects a Congressional intent to assure that minor actions which incrementally could have an adverse impact on the coastal zone should also be consistent with State programs." To accommodate the necessity of a manageable state program and to satisfy "the Act's provisions for comprehensive coverage for Federal action," NOAA drafted provisions requiring States to "list" those activities subject to review. Id. at 42883.

The regulation dealing with section 307(c)(3)(A) activities, section 921.6, "consistency of Federal licenses and permits," explained "it shall be presumed that a proposed activity will affect land or water uses in the coastal zone if the activity is to take place within, adjacent, or in close proximity to the boundaries of the coastal zone."

On August 29, 1977, NOAA published another proposed rule on Federal consistency (42 Fed. Reg. 43586-43610). In the 1977 proposed rule, NOAA further addressed the geographic scope of section 307(c)(3)(A)(proposed as Subpart D of 15 C.F.R. Part 930, its current designation). In the preamble, NOAA explained that states will be required not only to list Federal license and permit activities subject to review "but also in terms of general location when the State agency wishes to review activities outside of the coastal zone which are likely to significantly affect coastal resources (e.g., activities on excluded Federal lands, within coastal counties, etc.). The necessity for specifying location is to avoid consistency review for Federal license and permit activities unlikely to significantly affect the coastal zone." Id. at 43592. NOAA continued by stating that:

> [i]f a Federal permit subject to State agency consistency review is required for an activity where no State or local government permit is required (e.g., on excluded Federal lands, on the Outer Continental Shelf, on upland areas outside of the coastal permit jurisdiction, etc.) the State agency must rely upon the applicant's consistency certification or some other equivalent procedure to review the consistency of the proposed activity.
>
> Id.

Subpart D, "Consistency for Activities Requiring a Federal License or Permit," provided, in part, at section 930.54(b):

> In the event the State chooses to review Federal licenses and permits for activities outside of the coastal zone but likely to significantly affect the coastal zone, it must generally describe the geographic location of such activities.
>
> (Comment: The location element should encompass only areas where Federal license and permit activities are likely to cause significant effects on coastal zone resources. For example, the management program could list a Federal land use permit (e.g., Forest Service right-of-way permits for logging roads) and require review whenever such permit is requested along riverine areas where development is likely to significantly affect downstream areas within the coastal zone. The State agency should exclude geographic areas outside of the coastal zone where Federal license and permit activities generally will have insignificant impacts on coastal zone resources both in an individual and cumulative sense.)
>
> Id. at 43601.

The preamble to the 1977 proposed rule notes that some comments "pointed out that the regulations failed to discuss ... instances where more than one State would be affected." NOAA responded that "each affected coastal State with an approved program is entitled to participate in the review of Federal actions (§ 930.59)." Id. at 43586. Section 930.59 provided for procedures if the requirements of the approved management programs conflict. It stated:

> (a) In preparing consistency certifications for a license or permit activity affecting the coastal zone of more than one State, the applicant should determine whether the requirements of the management programs are in conflict with each other with respect to the proposed activity. If such a determination is made, the applicant should notify the State agencies, the Federal agency and OCZM of such conflict at the earliest practicable time.
>
> (b) Upon receiving notification from an applicant that a license or permit activity may be subject to conflicting requirements from more than one management program, the agencies identified in subsection (a) shall consult with each other and with the applicant in an attempt to identify

> alternative means for complying with the requirements of the management programs.
>
> Id. at 43602.

The final rule published at 43 Fed. Reg. 10510-10533 (Mar. 13, 1978) deleted section 930.59. The preamble explains:

> This section [section 930.59] has been deleted.
>
> Numerous Federal agencies pointed out that problems of interstate coordination applied with respect to all of the subparts and that conflicting State program requirements are more appropriately addressed as part of the section 305 and 306 provisions of the Act. Accordingly, instead of addressing this problem as a Federal consistency matter, the issue is covered instead in the Program Approval Regulations -- see 15 CFR 923.34 (directing each coastal State to consult with adjoining coastal States during the program development process in order to promote uniform management of a common resource and to minimize the possibility of conflicting uses occurring at the juncture of each State's boundaries) and 15 CFR 923.56 (directing coastal States to coordinate their efforts with other plans which interrelate with the State's coastal management program). A number of industry reviewers urged that Secretarial intervention be required in the event coordination efforts did not prevent the development of conflicting State requirements. NOAA has rejected this recommendation. The Act does not compel uniform requirements among adjacent States. Accordingly, there may develop some cases where a proposed activity, while permissible in one State, is subject to an objection based upon significant inconsistent effects upon a neighboring State. In this event, the Secretary of Commerce, may intervene if such action is deemed appropriate (see subpart H). [Secretarial Review relating to the Objectives or Purposes of the Act and National Security Interests]
>
> Id. at 10513-14.[1]

The deletion of section 930.59 did not obviate the need for an applicant for a Federal license or permit to certify consistency with all applicable coastal management programs. It merely replaced one mechanism of coordinating such conflicts with the option for Secretarial intervention. The consistency appeals procedure, outlined in Subpart H, could also provide another option for such an applicant.

Section 930.54(b) quoted earlier (renumbered section 930.53(b) in the 1978 rule making) was modified only slightly. It still required that the geographic area for review of activities outside the coastal zone be generally described in the Federally-approved coastal management program. This requirement is contained in the current regulations at 15 C.F.R. § 930.53(b).

This review of the regulatory history of the consistency provisions of section 307(c)(3)(A) demonstrates that NOAA has consistently interpreted this section to include activities either landward (whether in the reviewing state or in a neighboring state) or seaward of the coastal zone if such activities affect the land or water uses in the coastal zone of a state with a Federally-approved coastal management program.

Pursuant to Section 307(c)(3)(A) and NOAA's implementing regulations, states with approved coastal management programs have reviewed activities landward (including activities in neighboring states) and seaward of their coastal zones. If a state lists the types of Federal permits or licenses it intends to review in its Federally-approved coastal management program and generally describes the geographic area if outside the coastal zone, that state commences review upon notification of the proposed activity. A state also may review unlisted activities (both inside and beyond the coastal zone) by following the procedures established in 15 C.F.R. § 930.54, "Unlisted Federal license and permit activities." Those procedures require states to monitor unlisted Federal license and permit activities and to notify Federal agencies and applicants of unlisted activities affecting the coastal zone which require State agency review. The state also must notify the Director of OCRM. Approval by the Director of OCRM to review unlisted activities is required before such review can begin. The Director must approve such a request if the proposed activity reasonably can be expected to affect the coastal zone of the State.

Listed below are examples of consistency review of activities outside a state's coastal zone:

- Savannah Coal Port -- The proposed project consisted of construction and maintenance of a docking facility at the north end of Hutchinson Island, Georgia, placement of riprap and dredging. On June 22, 1981, the South Carolina Coastal Council found that project consistent with South Carolina's coastal management program.

- New River Canal Project -- The project was part of a master drainage plan encompassing Ascension Parish, an area outside of Louisiana's coastal zone. The Director of OCRM approved the request to review the project as an unlisted activity in January, 1984. The Director found that the project along with the associated urban and agricultural development could reasonably be expected to affect the hydrology and water quality of nearby coastal areas.

- Chemical Waste Management Research Burn -- The proposed activity involved the transportation of waste fuel oils contaminated with polychlorinated biphenyls (PCBs) from the Port of Philadelphia, Pennsylvania through the Delaware River and Delaware Bay to a site approximately 140 miles east of Delaware Bay. The material would be transported through the coastal zones of Pennsylvania, New Jersey and Delaware. Maryland, pursuant to 15 C.F.R. § 930.54, requested review of the activity which was granted in February, 1986.[2]

- River's Edge Marina -- The proposed marina development was located landward of New York's coastal zone. New York expressed concerns about wetlands impacts, water quality, and ~~recreational~~, social and physical impacts related to the capability of the Little Salmon River. The Director of OCRM granted New York's request to review the project as an unlisted activity in May, 1986.

- Gugel's Taj Mahal Artificial Island -- The proposed project was located approximately nine nautical miles south-southwest of Jones Inlet and east-southeast of Ambrose Light. Because the proposed project was in close proximity to New Jersey state waters, the Corps of Engineers requested the applicant to obtain a consistency certification from both New Jersey and New York. New York requested the right to review the proposed project pursuant to 15 C.F.R. § 930.54, because, while the New York coastal management program lists Corps of Engineers Section 10 permits, the program document did not contain a general description of the geographic location for review outside the coastal zone. In August, 1988, OCRM granted New York's request.

These examples illustrate NOAA's practice of interpreting section 307(c)(3)(A) to permit review of activities outside the coastal zone if such activities affect the land or water uses in the coastal zone. As further evidence of NOAA's interpretation of permitting states to review activities outside of their coastal zone is NOAA's acceptance of the on-going review by Massachusetts of an activity occurring totally in New Hampshire. In January, 1989, Massachusetts notified the Town of Seabrook to submit a consistency certification for the proposed wastewater treatment facility. The proposed outfall is located approximately 875 feet from the Massachusetts/New Hampshire boundary line.

In considering the degree of deference to be accorded to an agency's interpretation, the courts have generally held that the standard of judicial review of agency action is narrow. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). Courts show great deference to the interpretation given to a statute by the agency charged with its administration. Particular respect is due when there is a contemporaneous construction of a statute by those in charge of "setting the machinery in motion." The court need not find that an agency's construction is the only reasonable one, only that it is a reasonable construction. Deference is more clearly in order if the construction is of an administrative regulation. Udall v. Tallman, 380 U.S. 1, 16 (1965). In particular, long-standing administrative constructions tend to be favored. Aluminum Co. of America v. Central Lincoln People's Util. Dist., 467 U.S. 380, 390 (1984). Further, an interpretation that an agency has consistently followed deserves deference. Pattern Makers' League v. NLRB, 473 U.S. 95, 115 (1985).

In determining the degree of deference to accord, the Supreme Court has distinguished between legislative regulations, which have the force and effect of law, and interpretive rules, which are subject to a lesser degree of deference. Where Congress has expressly delegated to a Federal agency the authority to promulgate regulations such as in the CZMA, the resultant legislative regulations are subject to the arbitrary and capricious standard of review. Such regulations should be upheld if they are consistent with Congressional purpose. Morton v. Ruiz, 415 U.S. 199, 237 (1974).

The Ninth Circuit upheld NOAA's interpretation and application of its coastal management approval regulations in American Petroleum Institute v. Knecht, 456 F. Supp. 889 (C.D.Cal. 1978), aff'd 609 F.2d 1306 (9th Cir. 1979). At issue was NOAA's approval of the California Coastal Management Program pursuant to the agency's regulations interpreting the state program requirements established by the CZMA. The district court reviewed at some length the law applicable to the standard of review appropriate for NOAA's regulations, and concluded that the arbitrary and capricious standard applied to the agency's interpretation of its own regulations and that "considerable deference" was due the agency's decisions based on its regulations interpreting the CZMA. 456 F. Supp. at 908. The Ninth Circuit Court of Appeals adopted, in full, that part of the district court decision dealing with the standard and scope of review. 609 F.2d at 1310.

The district court's analysis included the "narrow" standard of judicial review, the principle of deference to an agency's interpretation of its regulations and the statute it administers, and the distinction between "legislative" and "interpretive" rules. Further, the district court noted where an agency's interpretation of a statute has been brought to the attention of Congress, and Congress has acquiesced in the administrative construction, greater deference is due. 456 F. Supp. at 907. Specifically, the district court found that Congress:

> fully cognizant of [NOAA's] efforts and activities in administering the CZMA since 1972, apparently determined [by enactment of the 1976 amendments to the CZMA] to reaffirm its original vesting of considerable discretion in NOAA, thereby calling into play the greater deference due "legislative" regulations noted above.
>
> Id. at 908.

The discussion in American Petroleum Institute v. Knecht of the proper standard of review to be applied to NOAA's coastal management approval regulations, and the degree of deference due them by the court, is pertinent to this examination of NOAA's regulations implementing section 307(c)(3)(A). Congress charged NOAA with the responsibility of implementing the CZMA. NOAA's construction of the statute was a contemporaneous one made by those officials responsible for implementing the Federal coastal management program. NOAA's construction of the consistency provisions is long-standing, and NOAA has consistently followed its construction. NOAA's regulations are based on the legislative history of section 307(c)(3)(A) of the CZMA, to the extent such history exists. The relationship between the regulations and section 307(c)(3)(A) is reasonable and rational and thus would be due considerable deference by a reviewing court.

Some, however, might argue that NOAA's section 307(c)(3)(A) regulations do not conform to section 307(e) because NOAA's interpretation increases state power at the expense of Federal agencies. Section 307(e) of the CZMA states:

> Nothing in this title shall be construed --
>
> (1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control or water resources, submerged lands, or navigable waters; ...
>
> (2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies ....

NOAA's interpretation of this provision is stated at 41 Fed. Reg. 42884 in response to several Federal agency reviewers who sought clarification. NOAA stated:

> [a]s made clear at page 20 of the Senate Report [S. REP. NO. 753, 92d Congress, 2d Sess. (1972) accompanying S. 3507] this provision "is a standard clause disclaiming intent to diminish Federal or State authority in the fields affected by the Act ...." NOAA construes this provision as merely preserving for each Federal agency the responsibility for its own mission, subject to such additional requirements as the Act may impose. Thus the duty the Act imposes upon Federal agencies is not set aside by virtue of this Section. The Act was intended to effect substantive changes in the Federal agency decision-making within the context of the discretionary powers residing within such agencies ....

The United States Supreme Court when considering this provision in California Coastal Commission v. Granite Rock Co., 480 U.S. _____, 107 S. Ct. 1419, 1430-31 (1987) also stated that it was a "standard clause disclaiming intent to diminish Federal or State authority in the fields affected by the Act ...."[3]

Section 307(e) should be read in conjunction with section 307(c). A major purpose of the CZMA was to encourage states to develop coastal management programs. The legislative history of the CZMA documents that Congress intended to motivate states through the consistency provisions. S. REP. NO. 277, 94th Cong., 2d Sess. 9, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 1768, 1776. It would appear strange to conclude that Congress granted the states authority to review Federal activities and Federal permit and license activities in section 307(c), only to eliminate that authority two subsections later.

The view that section 307(e) does not limit the authority granted by section 307(c) conforms to the rule of statutory construction that different provisions of the same statute should be read consistently with each other to avoid conflict. United States v. Stauffer Chemical Co., 684 F.2d 1174, 1186 (6th Cir. 1982). Therefore, a reasonable reading of section 307(e) leads one to conclude that it does not affect the substantive burden of Federal agencies and Federal permit and license applicants to comply with state coastal zone programs absent a clear conflict with another mandatory duty imposed by statute on that Federal agency. Under this interpretation, Federal agencies retain ultimate authority to administer applicable Federal statutes, although they must exercise their responsibilities consistent with the requirements of the CZMA.

Others might assert that allowing review of section 307(c)(3)(A) activities occurring in an adjacent state(s) could cause conflicts between states and provide the Federal licensing or permitting agencies with irreconcilable requirements. During consideration of coastal management legislation, members of Congress and witnesses at hearings acknowledged potential differences among the states. At the same time, they emphasized the necessity of each state developing its own, individual plan and expressed the hope that states would work together on regional problems or concerns.[4] The Stratton Commission Report noted that coastal waters of concern to more than one state can pose special problems:

> Without underestimating the potential difficulties, the Commission is persuaded that in most cases, sound management and management undertaken by one state probably will not differ greatly from that undertaken by an adjacent state. When differences do arise, they may be settled by direct negotiations between the parties concerned or by the establishment of ad hoc interstate committees or an interstate commission or compact.
>
> Stratton Commission Report at 60.

This position was reiterated by John Knauss, a member of the Stratton Commission, at a hearing held by the House. He also observed that state boundaries are not usually the natural division lines for the coastal zone. Coastal Zone Management: Hearings Before the Subcommittee on Oceanography of the House Committee on Merchant Marine and Fisheries, 91st Cong., 1st Sess. 14 (1969)(statement of John A. Knauss, Dean, Graduate School of Oceanography, University of Rhode Island).

When queried by Senator Stevens concerning interstate projects such as a pipelines, one witness replied:

> I would also point out, I think, a more likely case is that States through which a given pipeline moved would have certain differences in their land use programs. The legislation does require each State to exchange information and otherwise consult with its neighboring States in the development of its programs; and we do not try to tell a State that "your plan must conform to what your neighbor does." We think that would be an interference with the State prerogatives. But we do say "you should at least work closely with them in the development of your plan." Hopefully thereby minimizing radical differences.
>
> Coastal Zone Management: Hearings on S. 582, S. 632, S. 638 and S. 992 Before the Subcomm. on Oceans and Atmosphere of the Senate Comm. on Commerce, 92d Cong., 1st Sess. 131 (1971)(statement of Hon. Russell Train, Chairman, Council on Environmental Quality).

Representative Harrington expressed a similar view the following year. "Coastal waters flow freely across State boundaries, affecting many jurisdictions. The principle of compatible land uses applies to the entire stretch of coastal land, irrespective of legally created dividing lines. Clearly the answer is coordination between various jurisdictions in the planning of coastal zone management." CONG. REC. H7096 (daily ed. Aug. 2, 1972)(statement of Rep. Harrington).

The CZMA and its implementing regulations provide a variety of mechanisms to assist in interstate planning and to resolve conflicts between states, applicants and Federal agencies. Some of those mechanisms are listed below:

- Section 309 Interstate Grants -- The purposes of such grants include coordination of coastal zone planning for contiguous areas of coastal states; study, planning and implementation of unified coastal zone policies; establishment of an effective mechanism to identify and resolve mutual problems. Under NOAA's regulations implementing Section 309, states without Federally-approved coastal management programs are eligible if at least one state with a Federally-approved program participates in the proposed project or study. 15 C.F.R § 932.11(a)(4).

- Secretarial Mediation -- Pursuant to section 307(h), the Secretary is available to mediate serious disagreements between any Federal agency and a coastal state.

- Sections 307(c)(3) and (d) -- The Secretary, either on his own volition or at the request of an interested party or a Federal permit or license applicant, can override a state's objection to a proposed project. *See also* 15 C.F.R. § 930.125 and § 930.132.

- Informal Discussions -- Pursuant to 15 C.F.R. § 930.124, OCRM is available to assist parties to resolve their differences informally.

This array of conflict resolution provisions is designed to ease differences among interested parties. Thus, when a state objects to a proposed project, regardless of its location, the applicant can take a number of actions -- negotiate, modify the project, seek mediation, or file an appeal with the Secretary of Commerce. These options are equally available whether the proposed activity is geographically located in the objecting state, is located in a non-objecting state[5] or is subject to consistency review by more than one state.

Conclusion

There is no indication that Congress intended to limit geographically the scope of section 307(c)(3)(A) consistency review. Rather, Congress recognized the interstate effect of coastal management problems and encouraged states to develop programs to address the particular problems of each state. While acknowledging that some interstate conflict is inevitable, Congress provided methods to resolve such conflicts.

The plain language of section 307(c)(3)(A), the legislative history and longstanding agency interpretation and implementation support the position that the CZMA provides for review of proposed activities, regardless of location, that require a Federal license or permit pursuant to section 307(c)(3)(A) by a state if the following conditions are met:

1. the reviewing state has a Federally-approved coastal management program;

2. the proposed activity affects land or water uses in the coastal zone of the reviewing state;

3. the required Federal permit or license is listed in the reviewing state's approved program or the state has requested and received approval to review the proposed project as an unlisted activity pursuant to 15 C.F.R. § 930.54;

4. if the proposed activity is located outside the reviewing state's coastal zone, the management program must generally describe the geographic location of such activities (or invoke review pursuant to 15 C.F.R. § 930.54);

5. the review must be conducted within the time frames provided by section 307(c)(3)(A) and 15 C.F.R. Part 930, Subpart D; and

6. objections must conform to the requirements of 15 C.F.R. § 930.64.

Timothy R. E. Keeney

Timothy R. E. Keeney
General Counsel
National Oceanic and
Atmospheric Administration

FOOTNOTES

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1. The files on this rulemaking, which appear incomplete, reveal four industry comments on section 930.59. Texas Eastern Transmission Corporation noted, in part, "[t]his section needs the addition of specific mechanics that should be followed for

resolving the problem of conflicting state programs." Letter to Michael Shapiro, National Programs Office, Office of Coastal Zone Management, from Clif Williams, General Manager, dated Oct. 26, 1977.

Exxon Company, U.S.A. stated:

> "The regulations do not provide any remedy in the event the applicant and State agencies are unable to agree after the applicant notifies the agencies that a permit may be subject to conflicting coastal state requirements. The proper remedy should be mediation as provided for in section H."
>
> Letter to Michael Shapiro, National Programs Office, Office of Coastal Zone Management, from H. B. Barton, Regulatory Affairs Manager, dated Oct. 26, 1977.

Gulf Energy and Minerals Company - U.S. observed "[B]ecause of the potential difficulty in resolving consistency review where two or more states' conflicting programs are involved, the Secretary should be included in the consultation provided by Subsection (b)." Letter to Federal Programs Division, Office of Coastal Zone Management, from J. M. Bibee, Vice President, dated Oct. 25, 1977.

The American Petroleum Institute pointed out:

> This section's provision does not provide a mechanism for resolving problems which will arise if an applicant finds that the requirements of one state management program conflict with those of another state management program. It only provides that when those problems arise the State, the relevant Federal agency and the OCZM shall confer about them.
>
> We suggest that when such consultation fails to resolve a conflict, the Secretary shall be required to invoke his override authorities under section 307(a)(3)(A). In the absence of this or some other process for a final determination, many applications for Federal licenses and permits will be forever in dispute.
>
> Letter to Federal Programs Division, Office of Coastal Zone Management, From R. F. Nelson, Chairman, National CZM Steering Committee, dated Oct. 27, 1977.

2. Chemical Waste sued NOAA and others. It alleged that NOAA had acted beyond its statutory authority in granting Maryland's request for review. The complaint alleged that there was no reasonable likelihood that any material from the ship would reach Maryland's waters. The case was settled without reaching any coastal zone issues. Chemical Waste Management, Inc. v. U.S. Department of Commerce, et al., No. 86-624 (D.D.C. filed Mar. 7, 1986).

3. Further, a state's rights under other Federal statutes such as the Clean Water Act or the Outer Continental Shelf Lands Act remain unchanged. The consistency provisions of the CZMA grant additional rights to states which can be exercised concurrently with other rights granted by Congress or state legislatures. Additionally, because a state may be authorized to comment on a proposed activity under state statute or a Federal statute other than the CZMA such as the Clean Water Act, does not supercede or impair the state's authority to object independently to the proposed activity pursuant to section 307(c)(3)(A).

4. Congress encouraged this hope by providing for interstate grants in 1980, Pub. L. No. 94-464, which amended the CZMA to include section 309, a funding mechanism.

5. The sovereign rights of the non-objecting state are not lessened by an objection by a neighboring state. The non-objecting state may still issue all state and local permits and authorizations for the proposed project. Rather, the objection is directed to the Federal permitting or licensing agency -- a procedure specifically provided for by passage of the CZMA. Nor does the objection necessarily operate as veto of the project due to inclusion of dispute resolution provisions in the CZMA.

NATIONAL UNDERSEA RESEARCH PROGRAM

Senator HOLLINGS. I have other questions here about the Landsat and where you are going to get the money. You know we borrowed to keep it going for another 6 months.

On the undersea research program do I understand that you have got a low priority, and apparently think it is not central to NOAA's mission.

Dr. EVANS. Yes, sir; that is correct.

Senator HOLLINGS. I am glad Senator Weicker is not here. [Laughter.]

Senator RUDMAN. He probably is, too, Mr. Chairman.

Dr. EVANS. Thank you, Senator Rudman.

Senator HOLLINGS. How do you expect to explore the ocean if you are not going to get in it?

Dr. EVANS. Well, Mr. Chairman, we do have some undersea programs. They don't all really fall under that part. We do have some things under base that we are doing in terms of looking at events and parts of other kinds of programs. The other thing is that the habitat program, which is mostly funded by this, is beginning to pick up additional funding from the National Science Foundation.

One of the things that is happening is that the shift from what you do from an undersea laboratory goes into the area of biotechnology. It would be nice if it were part of NOAA's mission, but it is not. It is a very exciting new field, but with all the other costs that we have and all the other programs that we have and what we are supposed to be worrying about, the things that are happening in the estuaries and the other areas, it was one of the things that got moved on down, because although it is important research, there seemed to be other sources of funding that are coming up to be able to keep that program going on.

Senator BUMPERS. Mr. Chairman?

Senator HOLLINGS. Yes, sir.

FRUIT FROST PROGRAM

Senator HOLLINGS. The subcommittee has received letters from Senators Cranston and DeConcini with regard to the fruit frost program. The letters will be printed in the hearing record.

[The letters follow:]

LETTER FROM SENATOR ALAN CRANSTON

APRIL 11, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, United States Senate, Washington, DC

DEAR FRITZ: I am writing to request your continued support for funding of the National Weather Service's Agricultural Weather and Fruit Frost Advisory Programs in fiscal year 1990.

These programs have proven to be extremely helpful to farmers in California and other States by providing highly detailed weather forecasts which are used to reduce frost damage to crops and assist in integrated pest management efforts. Moreover, the programs have maintained one of the highest cost-benefit ratios among the National Weather Service's activities as they contribute to considerable cost savings to farmers through more efficient and timely use of fuel and pesticides.

Fritz, I much appreciate your past support of the Agricultural Weather and Fruit Frost Programs and hope I can count on you to maintain funding for these important programs in fiscal year 1990 at $1,418,000—the level the Committee has recommended every year since 1981.

Thank you for your consideration of this request.

Cordially,

ALAN CRANSTON.

LETTER FROM SENATOR DENNIS DECONCINI

APRIL 18, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies, United States Senate, Washington, DC

DEAR MR. CHAIRMAN: I would like to urge, again this year, that funds for Agricultural Weather/Fruit Frost be provided in the Commerce, Justice, and State, The Judiciary and Related Agencies appropriations bill for fiscal year 1990.

The Congress has consistently reinstated funding for the Fruit Frost Forecast and Agricultural Weather Advisory Service Program. It has been recognized that by providing highly detailed weather forecasts used to decrease frost damage to crops and to assist integrated pest management efforts, this program has been and continues to be vital to citrus and other perishable crop growers.

You have led the effort to maintain funding for this vital program in the past and countless growers are appreciative of your efforts. I hope that you will appropriate at least the current funding level for fiscal year 1990. Thank you for your continued support.

Sincerely,

DENNIS DECONCINI,
United States Senator.

CORRESPONDENCE FROM SENATOR PETE WILSON

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received a letter from Senator Pete Wilson with regard to the fruit frost program. By direction of the chairman the letter has been printed in the hearing record.]

[The letter follows:]

LETTER FROM SENATOR PETE WILSON

MAY 25, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, United States Senate, Washington, DC

DEAR MR. CHAIRMAN: I am writing to express my concern over the Administration's budget proposal to delete funds for the Agricultural Weather Fruit Frost program. Federal funding is needed to continue this important service for California and the nation as a whole.

The service's primary role is to give advanced notice to growers as to when to prepare for frost. From late September through early April, the Fruit Frost program reports weather patterns 4 to 5 days in advance to allow growers adequate opportunity to prepare for possible adverse weather conditions. Such advanced notice is often critical in saving millions of dollars in perishable crops. For example, the time needed to employ helicopters in frost protection efforts often requires substantial prior notification.

The program has a successful history of saving crops and money. In California alone, it is estimated that a major freeze year could wipe out over 30 percent of all frost sensitive crops. In 1987, San Diego County lost $37 million in avocados and strawberries due to frost. However, the County estimates that without the Fruit Frost program these losses would have been upwards of $100 million. The savings from this incident alone clearly illustrates the benefits of the Fruit Frost program.

For the past several years Congress has rightfully maintained its support for this valuable program. Most recently, despite a similar proposal to eliminate its funding, Congress appropriated $382,000 toward the program for fiscal year 1989. I request that an equal commitment in funding be appropriated for fiscal year 1990.

Thank you for your consideration of this important matter.

Sincerely,

PETE WILSON.

CLIMATE AND GLOBAL CHANGE PROGRAM

Senator BUMPERS. Before we terminate this happy occasion, have you discussed global warming here?

Senator HOLLINGS. We talked about the global office, and the responsibility that NOAA has.

Senator BUMPERS. You were seeking an additional $11 million?

Dr. EVANS. Eleven million dollars to bring that total up to $20 million as our part of the multiagency programs on global warming.

Senator BUMPERS. Dr. Evans, how well is this interagency cooperation working?

Dr. EVANS. Extremely well, extremely well.

Senator HOLLINGS. We reported that bill just the day before yesterday.

Dr. EVANS. It has gone extremely well. One of the things that I mentioned earlier to the chairman, and I think it is important enough that I would like to repeat, is that the interagency working and funding, crosscutting through OMB and other programs that have a global implication like this, seems to be a process that is working in the area of coastal oceans, which is another program that we have here.

We should look at it from that standpoint, because NOAA is, indeed, a resource agency. We are working as a resource agency, and so when we get compared with the other resource agencies, I think that does have a definite effect upon our budget, and I think that is important.

Senator BUMPERS. Mr. Chairman, according to my staff memo, the total expenditures this year for global warming are running at about $133 million, and I think the total of all of the agencies is $190 million. It is going to be close to a $60 million increase. Does that sound right?

Dr. EVANS. That is in the 1990 budget, $190.5 million.

Senator BUMPERS. Yes; $133 to $190 million.

Dr. EVANS. It was $133.9 million in 1989, so that is a very significant increase.

Senator BUMPERS. What is NOAA doing with this money?

Dr. **Evans**. A variety of things. I can give you some detailed information.

Senator **Bumpers**. Why don't you do that. You don't even have to clutter the committee record, just send it to me, unless the chairman and Senator Rudman would like it.

Senator **Rudman**. Send it.

Senator **Hollings**. Yes; we ought to have it in the record.

[The information follows:]

Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA): Building on its base of oceanic and atmospheric science and services, DOC/NOAA's focused programs emphasize improving predictions of climate change and its regional implications, on time scales from a single season to centuries. NOAA's mission-directed activities include research on physical and biogeochemical processes in the climate system, in situ measurements, climate modeling, and diagnostic techniques for detecting global changes. The fiscal year 1990 budget proposes $20 million for DOC/NOAA, roughly doubling the fiscal year 1989 level. See attached table for NOAA's and agencies' totals. We have also enclosed a copy of the Committee on Earth Sciences report for your files.

1989–90 U.S. GLOBAL CHANGE RESEARCH PROGRAM BUDGET

(Dollars in millions)

Focused program	Total budget		Biogeochemical dynamics		Ecological systems and dynamics		Climate and hydrolic system		Human interactions		Earth system history		Solid Earth processes		Solar influences	
	1989	1990	1989	1990	1989	1990	1989	1990	1989	1990	1989	1990	1989	1990	1989	1990
NSF	39.2	53.5	13.5	18.3	1.9	1.9	13.2	17.0			2.0	4.7	6.2	6.5	2.4	5.1
DOE	20.2	27.2	6.0	5.5	4.2	6.7	7.0	10.2	2.0	3.6					1.0	1.2
DOI/USGS	5.3	10.3				0.3	2.3	5.0	1.5	2.0	1.0	2.3	0.5	0.7		
NASA	14.5	21.5	3.0	4.4	4.3	6.4	4.3	6.4					2.2	3.3	0.7	1.0
DOC/NOAA	9.0	20.0		3.0			9.0	17.0								
EPA	27.4	35.3	0.8	3.5	7.4	13.2	0.7	2.2	18.5	16.4						
USDA	18.3	22.7	6.5	10.2	10.3	11.0	1.5	1.5								
Agency totals	133.9	190.5	29.8	44.9	28.1	39.5	38.0	59.3	22.0	22.0	3.0	7.0	8.9	10.5	4.1	7.3
Research	116.4	158.9	26.9	40.1	24.9	35.0	31.6	46.1	22.0	20.8	3.0	3.5	5.4	8.1	2.6	5.3
Observations	10.7	15.0		1.5	2.0	2.5	5.0	8.5					3.5	2.2	0.2	0.3
Data Management	2.3	8.1	0.4	0.8	0.2	1.0	1.4	4.7		1.2				0.2	0.3	0.2
Facilities	4.5	8.5	2.5	2.5	1.0	1.0						3.5			1.0	1.5

CORRESPONDENCE FROM THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES AND THE NEW ENGLAND AQUARIUM

Senator HOLLINGS. The subcommittee has received a letter from George D. Lapointe, legislative counsel, International Association of Fish and Wildlife Agencies on behalf of the National Marine Fisheries Service and the Great Lakes Fishery Commission, as well as a letter from John H. Prescott of the New England Aquarium with regard to the National Marine Fisheries Service budget.

The letters will be printed in the hearing record.

[The letters follow:]

LETTER FROM GEORGE D. LAPOINTE, LEGISLATIVE COUNSEL, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

APRIL 19, 1989.

Senator ERNEST F. HOLLINGS,
Chairman, Appropriations Committee, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, S-146A Capitol Building, Washington, DC

DEAR SENATOR HOLLINGS: The International Association of Fish and Wildlife Agencies respectfully requests that the enclosed statement on the fiscal year 1990 budget of the National Marine Fisheries Service and the Great Lakes Fishery Commission be considered in your deliberations of the fiscal year 1990 Commerce, Justice, State, and the Judiciary budget.

This statement on the fiscal year 1990 NMFS budget was written by the Budget Committee of the Association, and is the minimum funding needed for the Federal Government and States to cooperatively manage the Nation's marine resources. I would be happy to discuss the Association's position with the Appropriations Committee staff to answer any questions that you might have.

Sincerely,

GEORGE D. LAPOINTE,
Legislative Counsel.

STATEMENT OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

The International Association of Fish and Wildlife Agencies, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the States, provinces, and Federal Governments of the United States, Canada, and Mexico. All 50 States are members. The Association has been a key organization in the promotion of the principles of sound resource management and the strengthening of Federal, State, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The National Marine Fisheries Service (NMFS) proposed budget of $99.9 million for fiscal year 1990, a 41 percent reduction over the $168.1 million provided in fiscal year 1989, is clearly inadequate and unacceptable. This budget proposal seems to begin a 20 percent reduction in personnel over the next 4 years, in spite of the widely accepted view that current funding and staffing levels are insufficient to meet existing congressional mandates. The proposed reductions in funding and staffing will threaten the very survival of NMFS as an effective management agency and further jeopardize NMFS' ability to manage the Nation's marine resources. NMFS is apparently being dismantled at the same time that the public is demanding greater emphasis on appropriate ocean resource management; including balancing fisheries interests (commercial, recreational) and other related goals (seabirds, mammals habitat, and pollution).

The NMFS fiscal year 1990 budget request assumes passage and implementation of a complicated and controversial marine user fee proposal. The Association believes that it is unrealistic and inappropriate to assume the passage of enabling legislation to provide a $42 million contingency supplement. For NMFS to carry out its congressionally mandated programs such as implementation of Marine Mammal Protection Act amendments, or fishery statistics collection, assured funding is needed, not a speculative contingency package. These vital programs are being held hostage to the passage of an unlikely legislative proposal. This is a disservice to all interested in national marine resource management.

The Association believes that the highest priority functions of NMFS are research, data collection, and management of marine fishery resources. These major Federal responsibilities cannot, and should not, be delegated to industry or the States. The Association believes that it is in the Nation's best interest to restore the following items to the NMFS budget.

The Association recommends that the Interjurisdictional Fisheries Act of 1986 be fully funded at $5.35 million as authorized by Congress. This includes $350,000 to the Interstate Fishery Compact Commissions to continue their important role in coordinating fishery research and management among coastal States, and with the Regional Fishery Management Councils.

Grants to States through the Anadromous Fish Conservation Act should be restored to the 1986 level of $3 million including $500,000 for the Emergency Striped Bass Study.

The budget for the operations of the Regional Fishery Management Councils, established by Public Law 94-265, should be restored to the 1987 level of approximately $8 million. To reduce Council funding, at a time of ever increasing responsibilities, will render the Councils ineffective.

The Association recommends that the Marine Recreational Fishery Statistics Program be retained and funded at $4 million. This program has not grown since its inception in 1979, in spite of increased demand for recreational fishing and adequate statistics on this economically and socially important sector of the fishing industry.

The Association strongly opposes termination of Federal support for the Columbia River mitigation hatcheries. To do so would have serious impacts on the important fishery resources of the Columbia River and would violate mitigation agreements made in good faith.

The Association strongly recommends that NMFS habitat research and conservation programs be maintained at levels of $14.9 million and $5.3 million, respectively. The Association supports the $12 million Coastal Oceans Science Initiative but believes that this program should be directed by NMFS, rather than the National Ocean Service, to assure integration with ongoing coastal fisheries and habitat programs.

The Association recommends maintenance of a $9.3 million Saltonstall/Kennedy (S/K) grant program.

The Association recommends that $7.5 million be added to the NMFS budget to properly implement the provisions of the Marine Mammal Protection Act (P.L. 100-711), as amended last year. Without these funds, other programs important to State and Federal fishery management will be reduced or eliminated.

Numerous other inadequacies exist in the NMFS fiscal year 1990 budget. The work of the fisheries councils and State management programs have always been inhibited by the inadequacy of fishery statistic and stock assessment estimates. NMFS laboratories and NOAA research vessels constitute a valuable national resource of scientific, technological expertise, equipment, and facilities that deal with a multitude of fisheries management and ecological resource questions. Proposed cuts to laboratories and vessels would virtually eliminate these capabilities. Also, support for the Councils and Commissions depends on appropriate funding for data collection programs such as MARMAP, MARFIN, PACFIN, and SEAMAP.

A budget should reflect an agency's role, mission, and responsibilities; this budget fails this test. The fiscal year 1990 NMFS budget reflects an ongoing pattern of disregard by the Administration for NMFS' mission as set forth by law and supported by the public and Congress. It appears to reflect an imprudent fiscal abandonment of congressionally mandated fisheries and oceans resource management programs. The Association believes it is time for Congress to address this deplorable trend in a forthright manner. The Association suggests oversight hearings to determine how best to address the public's ever increasing need for coordinated and appropriate ocean resource management, resulting in Congressional direction on how to best manage these resources in the years ahead.

On a related topic, the Great Lakes Fishery Commission is funded through the State Department. The Commission's sea lamprey control efforts, required by the 1955 Convention on Great Lakes Fisheries, are vital to maintaining the biologically and economically important fisheries of the Great Lakes. The Association recommends that $4.2 million be provided to ensure effective levels of sea lamprey control by the Great Lakes Fishery Commission.

LETTER FROM JOHN H. PRESCOTT, EXECUTIVE DIRECTOR, NEW ENGLAND AQUARIUM

APRIL 10, 1989.

Honorable ERNEST F. HOLLINGS,
SR-125, Russell Building, Washington, DC

DEAR SENATOR HOLLINGS: As Executive Director of the New England Aquarium, I am writing to ask your support for two projects of critical importance. I will be testifying before the House Appropriations Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies this month regarding these projects.

The New England Aquarium proposes a research project on the capture, transport, cultivation, and propagation of commercially valuable bluefin tuna that will have two far-reaching impacts. One, the project will be a great benefit to aquariums and zoos worldwide, who to date lack the technologies to keep adult tuna in captivity. Two, the project will have a potentially major impact for U.S. commercial fisheries by adding tuna, a popular food fish, to the realm of commercial aquaculture ventures.

The Aquarium is requesting $250,000 for this project, out of total projected costs of $400,000. This includes planning for an offsite facility to address the Aquarium's aquaculture technology goals, planning and research into fish larval aquaculture, and juvenile/adult tuna rearing. The technologies developed through this project will have tremendous commercial value, and we will be able to identify which aspects of tuna production could be profitably pursued in specific regional waters.

As a member of the Right Whale Research Consortium, I am also seeking your support for the Right Whale Research Initiative. The right whale is the rarest whale in the world. I have to report that the 2 years of research results that we are reporting on and which my colleague, Howard Winn, has forwarded to many member of Congress, is not encouraging because there is still no indication that the right whale population of approximately 300 is increasing.

As Dr. Winn indicated, $500,000 was originally requested, but only $235,000 appropriated, much of which was not available until year end. At this point, we are down to basic monitoring of the population—if we are to do more, an increased appropriation to $350,000 is needed. Unfortunately, NOAA has not requested an appropriation for this important research in the upcoming budget.

If any other information is needed, please feel free to call at (617) 973-5220. I would be pleased to disuss these projects with you further.

Sincerely,

JOHN H. PRESCOTT,
Executive Director.

CORRESPONDENCE FROM THE AMERICAN ASSOCIATION OF ZOOLOGICAL PARKS AND AQUARIUMS

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received a letter from Edward C. Schmitt, chairman, Legislation Committee on behalf of the American Association of Zoological Parks and Aquariums with regard to the National Marine Fisheries Service particularly with regard to the funding for information collection and analysis and conservation and management operations. By direction of the chairman, the letter has been printed in the hearing record.]

[The letter follows:]

LETTER FROM EDWARD C. SCHMITT, CHAIRMAN, LEGISLATION COMMITTEE, AMERICAN ASSOCIATION OF ZOOLOGICAL PARKS AND AQUARIUMS

MAY 2, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Senate Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Capitol S-146, Washington, DC

DEAR CHAIRMAN HOLLINGS: The American Association of Zoological Parks and Aquariums appreciates the opportunity to submit these comments concerning the proposed 1990 budget for the National Marine Fisheries Service. AAZPA is the largest professional zoological park and aquarium organization in the world. AAZPA represents virtually every zoological park, aquarium, wildlife park and oceanarium on the North American continent and the vast majority of the professional staff members employed therein.

INFORMATION COLLECTION AND ANALYSIS

Under this subactivity, the Administration is seeking to cut right whale research by $235,000, protected species research by $1,200,000 and marine mammal research by $1,506,000. There is a continued need for these three programs to be level funded. It is impossible for NMFS to carry out its tasks under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) without having current, accurate data on marine species.

Research began on the right whale, the rarest whale in the world, in 1987. Currently, this research is being conducted by the Right Whale Research Consortium (the University of Rhode Island, Woods Hole Oceanographic Institution, New England Aquarium and the Center for Coastal Studies). There is still more information needed such as a firmer estimate of the population and where the mature males and non-pregnant females spend their winters. AAZPA believes such research is essential to the survival of the species and is a vital element of the ESA recovery planning process. Any reduction in the budget would further delay development and implementation of the recovery plan.

CONSERVATION AND MANAGEMENT OPERATIONS

The proposed budget would cut the endangered species recovery plan by $235,000 and provide no funding for the implementation of the MMPA Amendments of 1988. AAZPA believes that the NMFS budget for endangered species recovery plans must, at a minimum, be funded at the 1989 levels. The recently released Government Accounting Office Study cites many problems with the implementation of the requirements under the Endangered Species Act by NMFS. That agency has just begun the process of developing guidelines for a priority system and has been extremely slow in developing the recovery plans required by the Act. AAZPA strongly believes there must be funding for implementation of the Marine Mammal Protection Act Amendments of 1988. The amendments included a number of new NMFS programs for which money is absolutely necessary.

Thank you for your consideration of our comments. If AAZPA can provide additional information, please contact us.

Sincerely,

EDWARD C. SCHMITT,
Chairman, Legislation Committee.

ADDITIONAL STATEMENTS

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received statements from the Nature Conservancy, the National Estaurine Research Reserve Association, and from Margaret Davidson on behalf of the National Association of State Universities and Land Grant Colleges and the Sea Grant Association. By direction of the chairman, the statements have been printed in the hearing record.]

[The statements follow:]

STATEMENT OF THE NATURE CONSERVANCY

Mr. Chairman, members of the Subcommittee, my name is L. Gregory Low, and I am Vice President, Major Program Development, of The Nature Conservancy. I would like to thank you for the opportunity to testify regarding the National Oceanic and Atmospheric Association's National Marine Sanctuary and National Estuarine Research Reserve programs, which have resulted in the preservation and protection of some of this country's most valuable marine and estuarine ecosystems.

The Nature Conservancy is a national, non-profit, land conservation organization with nearly 500,000 members. Our principal and sole objective is to identify the best and most important examples of America's ecosystem types and rare species habitats - this country's biological diversity - and to provide protection for the most threatened of those areas and species. We are the largest private organization engaged in land and water conservation in the United States today. The Nature Conservancy has been responsible for the preservation of more than 3,500,000 acres of ecologically significant natural lands since 1951. The Nature Conservancy is concerned with the preservation of biological diversity in our waters as well as on our lands, which brings us to these hearings today.

Protection of this country's marine and estuarine resources is becoming increasingly important as urbanization and development pressures are resulting in the serious degradation and permanent alteration of these fragile ecosystems. The National Oceanic and Atmospheric Administration administers two very important programs designed to help protect these resources, the National Estuarine Research Reserve Program and the National Marine Sanctuary Program. Directed by NOAA's Marine and Estuarine Management Division these programs designate marine or estuarine areas of special national significance in order to protect their conservation, recreational, and ecological values as well as enhance public awareness, understanding, appreciation and wise use of the marine environment. All of these components are essential to a comprehensive national policy to adequately protect marine and coastal ecosystems.

Modification, degradation and development of America's coastlines is occurring at an alarming rate as more than half the Nation's coastal wetlands have been lost to development. There is no evidence to suggest that this trend is slowing. Realizing this need, Congress has increased the number of designated Marine Sanctuaries to 17 and the number of Estuarine Reserves to 21. Unfortunately, these two very important programs have been seriously underfunded. Both critical research as well as acquisition funds have remained at the same levels or declined since the programs' inception in 1974. The Nature Conservancy is here today to support the National Estuarine Reserve and National Marine Sanctuary Programs and to urge the Committee to appropriate the levels authorized by the Congress for Fiscal Year 1990: $5,500,000 for the National Estuarine Research Reserve Program and $4,900,000 for the National Marine Sanctuary program.

National Estuarine Research Reserves Program

Section 315 of the Coastal Zone Management Act establishes the National Estuarine Research Reserve System. It is a matching grant program where the federal government provides funds to coastal states for estuarine protection, research and education. The 50-50 matching funds are used for acquisition of reserves, operation and management, development of on site facilities, interpretive and education programs and research. The Estuarine Reserve system is unique in its ecosystem management approach to protection, and aims to develop a representative system of sanctuaries across the country. Currently there are 17 designated reserves, another scheduled for designation this year and three more under study.

The Nature Conservancy has worked cooperatively with the National Oceanic and Atmospheric Association on protection of several National Estuarine Research Reserves, I below are some examples of these projects. We were able to acquire ecologically significant parcels of land in the reserves which were later purchased by the states using Section 315 grant monies. These include Weeks Bay Alabama, Currituck Banks and Rachel Carson North Carolina, and South Slough Oregon Estuarine Reserves. The Nature Conservancy is also working cooperatively with NOAA on an Estuarine Research Reserve site in South Carolina called the ACE River Basin.

Rachel Carson and Currituck, North Carolina

The Rachel Carson component of the North Carolina National Estuarine Research Reserve is a rich undisturbed mix of communities including tidal creeks, salt marshes, intertidal sand and mud flats, high marsh-low meadow and maritime shrub thickets. This diverse habitat supports a great variety of plant and animal life. 161 species of birds, two federally listed, have been observed at Rachel Carson. The federally listed Atlantic loggerhead turtle as well as nine other species of reptiles and ten species of mammals, including river otter, gray fox, Norway rat, raccoon, feral horse and marsh rabbit inhabit the area. This diversity also makes Rachel Carson a particularly valuable site for research and education.

Development pressures were seriously threatening the property and preservation became a reality through the concerted efforts of local civic organizations, environmental groups such as the Conservancy and interested citizens. The North Carolina Nature Conservancy helped by purchasing a particularly significant 474 acre parcel, which was subsequently purchased with Section 315 state grant monies.

The Currituck Banks site borders North Carolina's Currituck Sound and is part of the state's National Estuarine Program. Currituck Banks lies within the transition zone between northern and southern species associations creating exceptional physiographic as well as habitat diversity. Flats, marshes, maritime shrub forests, dune systems and beaches are found at Currituck. Currituck Sound is an important component of the Atlantic Flyway and its marshes and waters are well-known throughout the nation as prime waterfowl habitat. The sound harbors 6% of the Atlantic Flyway waterfowl populations and 32% of North Carolina's wintering fowl. Currituck is home to five federally listed endangered species, including the brown pelican and bald eagle, and 63 state endangered or sensitive species.

While several large tracts on the Banks have been subdivided, others have been purchased by private land conservation groups. The Nature Conservancy acquired a combination of title and easements to two pieces of property on Currituck Banks that were subsequently included in the Sanctuary program and an adjoining National Wildlife Refuge.

Weeks Bay, Alabama

The 2,668 acre Weeks Bay National Estuarine Research Reserve was established in 1986 through a NOAA grant and the state of Alabama. The marshes and open waters of Weeks Bay support a diversity of fish and wildlife populations and a valuable sport and commercial fishing industry. It is habitat for resident and non-resident waterfowl as well as many species of mammals. In addition, endangered species such as the brown pelican and several sea turtles are found at the Reserve. The Conservancy purchased two properties that eventually became part of the Weeks Bay National Estuarine Research Reserve Program.

South Slough, Oregon

South Slough in Coos County Oregon was the first Reserve established as part of the Estuarine Research Reserve Program. The slough is a rich diversity of salt and freshwater marshes, mud flats and intertidal zones where salt and freshwater mix. These areas are one of the most productive life zones on earth.

South Slough harbors great numbers and diversity of shorebirds and waterfowl and is also home to river otters, steelhead trout, and a large great blue heron rookery. South Slough has developed educational and interpretive facilities which enjoy tremendous public use and visitation. The Conservancy and other conservation organizations helped purchase property that was later acquired by the State Land Board for inclusion in the reserve.

Ace River Basin, South Carolina

An Estuarine Research Reserve is in the planning stages in Colleton County, South Carolina, where the Ashepoo, Combahee and Edisto Rivers converge. These three remaining pristine rivers comprise a series of islands and marsh habitats for a wide diversity of species. Pristine marsh supports one of South Carolina's most productive estuaries and the beautiful St. Helena Sound. Species that depend on the area for survival include the loggerhead sea turtle and the short nose and Atlantic sturgeon, both federally listed. A large population of bald eagles feeds nearby, breeding and nesting inland from the reserve. This site is also one of the most productive shellfish and fishing areas in the Southeast. The Nature Conservancy plans to donate two islands to the Research Reserve System, and funds are needed for additional acquisitions by the state of South Carolina.

Funding Needs

Unfortunately, the National Estuarine Research Reserve System is severely underfunded. Although authorized at $5,000,000 for Fiscal Year 1989, this very important cooperative program was appropriated only $2,790,000. Congress authorized $5,500,000 for Fiscal Year 1990 and the administration has requested $2,790,000. In 1974 $4 million was appropriated for South Slough in Oregon, the first Estuarine Reserve. Since then the reserve system has grown to almost 18 reserves, but annual funding has only remained constant or actually decreased. Only $2 to $3 million has been appropriated annually in recent years for management, education, acquisition and all the other functions of the system. This shortage of money has resulted in annual research funds of only $500,000 and extremely inadequate resources for the reserves' other purposes - education, monitoring, acquisition and protection.

National Marine Sanctuary Program

The National Marine Sanctuary Program is a federally funded program authorized under title III of the Marine Protection, Research and Sanctuaries Act. As in the Estuarine System, the purposes are protection of the resource, applied marine research and public education.

The Nature Conservancy is actively working to protect the critical land and water resources of the Florida Keys. Among our multiple efforts, we are cooperating with the National Oceanic and Atmospheric Association on the protection of two critical coral reef sites, Key Largo and Looe Key National Marine Sanctuaries.

Key Largo and Looe Key, Florida

Stretching for 220 miles from the Southern tip of Florida is the most significant coastal ecosystem of the mainland United States, the Florida Keys. The Keys contain the only living coral reef in the United States, which is also the third largest barrier reef ecosystem in the world. Besides their natural beauty and wonder, coral reefs are second only to tropical rainforests in the diversity of species they harbor and the biological resources they produce. In addition, the Florida Keys seascape is also a highly productive and valuable economic resource. They are the primary drawing card for the regional tourist economy as it attracts the largest number of snorklers and divers in the world. It is also a world famous destination for sportfishing.

Key Largo and Looes Key National Marine Sanctuaries were established to protect the most significant portions of the coral reef and the Florida Keys seascape. However, increasing urbanization of the Florida Keys and south Florida threatens the very survival of the living coral reefs contained in these National Marine Sanctuaries. In June 1988, NOAA sponsored a Coral Reef Workshop where 50 coral reef scientists and managers concluded that the reefs of the Keys are being impacted by both direct and indirect human activities, resulting in a noticeable and documented decline in the health and vitality of the living reefs. Anchor damage, boat groundings, diver damage, overfishing, swelling numbers of visitors and ever increasing water pollution all threaten the very survival of the living coral reefs of the Keys.

Increased funding for the Marine Sanctuary program are necessary to address these threats and to support the education, visitor management and law enforcement needs of Key Largo and Looes Key. The effectiveness of these programs has been severely hampered by inadequate resources. Increased funding levels are also required for research, inventorying and monitoring of the coral reef as well as activities necessary for the proper management and protection of Key Largo and Looes Key Sanctuaries.

Funding Needs

Currently there are 7 designated National Marine Sanctuaries covering 4,000 square miles of ocean. Congress directed NOAA to designate 4 additional sites at a minimum within the next two years. Congress also directed NOAA to conduct studies of six additional sites for inclusion in the system, including three coral reef sites in the Florida Keys. However, this year the National Marine Sanctuary Program received only $2,500,000 of an authorized $4,250,000. This is only a $6,000 increase from the previous year to do the additional work on 10 sites that was directed by Congress. The program was authorized $4,900,000 for FY 1990 and the administration has requested $2,025,000.

Research in the Marine Sanctuary program has been at a virtual halt since 1985. In addition, the number of sites has grown to seven, with ten waiting in the wings, while appropriations have steadily decreased. Quite simply, with these funding levels the Marine Sanctuary Program can do nothing but maintain basic and minimal operations. Vital protection, education and monitoring needs are unwillingly neglected.

Conclusion

The protection of our marine and estuarine environments and the rich diversity of life they support is too important to let these well conceived and critical programs falter due to a lack of federal resources. The Nature Conservancy urges the Committee to approve, at a minimum, the levels of funding authorized by the Congress for the National Estuarine Research Reserve Program, $5,500,000, and the National Marine Sanctuary Program, $4,900,000.

Thank you. This concludes my statement.

STATEMENT OF THE NATIONAL ESTUARINE RESEARCH RESERVE ASSOCIATION

Chairman and Members of this distinguished Subcommittee, I am grateful for the opportunity to submit testimony on behalf of myself and my colleagues. My name is Terence Stevens and I am President of the National Estuarine Research Reserve Association (NERRA), as well as Director of the Padilla Bay National Estuarine Research Reserve. NERRA is an association of on-site Reserve Managers and other state Reserve staff of the designated and proposed national estuarine research reserves. I would like to present our views in support of a $5.4 million appropriation for state grant programs pursuant to Section 315 of the Coastal Zone Management Act (CZMA) for the National Estuarine Reserve Research System.

The President's request for $1.19 million for this program falls seriously short of our needs. This year we again rely on the leadership of this Subcommittee and Congress to restore the funds necessary to continue the strong Federal-state partnership in developing a system of long-term estuarine research sites dedicated to improving coastal management.

NERRA urges this Subcommittee to recommend an appropriation of $5.4 million for Section 315 National Estuarine Research Reserve grants for FY90. This sum includes $1.26 million to support the Federal share of basic operations at 18 Reserve sites. Another $1.98 million is needed for grants to fulfill the reserves' research, monitoring, and education mandates. Land acquisition at existing sites will cost another $1.6 million, and new site development in seven additional states will require $.57 million.

THE NATIONAL ESTUARINE RESERVE RESEARCH SYSTEM

The National Estuarine Reserve Research System includes over 275,000 acres of estuarine waters, tidal wetlands, shallows, and shoreline preserved at 17 sites representative of many of the different coastal regions and estuary types in our nation. These sites comprise a unique system of natural field laboratories for long-term research, monitoring, and public education about the natural and human processes affecting our estuaries. Sites range from the rocky coasts of Maine south to Carolinian barrier island systems and West Indian mangroves, and west to Pacific sloughs and productive Columbian wetlands. Reserve sites are located in Washington, Oregon, California (2), Hawaii, Alabama, Florida (2), Puerto Rico, Georgia, North Carolina, Maryland, Massachusetts, New York, Ohio, Rhode Island, and Maine.

The Stratton Commission is credited with the original vision for a completed network of 25 to 30 long-term research sites representative of 27 biological and geological regions. Now slightly more than half complete, the System will be expanded later this year with two new sites in New Hampshire and Virginia. In addition, Texas, Louisiana, South Carolina, Delaware, and New Jersey are also seeking designation of national estuarine research reserves, indicating the continued strong support among coastal states for new sites.

SECTION 315 GRANTS

Section 315 provides for Federal-state partnerships in the development of this System by authorizing grants to coastal states for this purpose. Within NOAA, the Marine and Estuarine Management Division (MEMD) awards grants to fund up to 50 percent of the cost of developing a research reserve, including funds for land acquisition, site operation and management, construction of research and education facilities, educational and interpretive activities, and research and monitoring. The Federal contribution for these projects is nearly always exceeded by state and private matching funds, often several times over. At Waquoit Bay, Massachusetts, for example, NOAA grants of $1.8 million are matched by almost $10 million in state funds.

Unfortunately, the growth in the states' commitment to this program has not been matched by the Federal government. In 1978, when only five reserves had been designated, the FY79 Section 315 appropriation was $3 million. Last year, with 17 designated reserves, the FY89 appropriation was only $2.79 million.

Steady growth in the number of designated sites has resulted in a System with reserve sites at all stages of development. However, all of these require Federal support to develop and maintain key system-wide activities, such as research, monitoring, and education. In addition, many sites are still acquiring land or building interpretive or research facilities. Resource inventories, environmental impact statements, and management plans must also be prepared for new sites proposed for the System.

RESEARCH AND EDUCATION FOR IMPROVED COASTAL MANAGEMENT

The Coastal Zone Management Reauthorization Act of 1985 highlighted two important roles for the Estuarine Research System, 1) to stimulate, coordinate, and translate estuarine research in support of improved coastal decision-making, and 2) to enhance public awareness and understanding of the nation's estuaries.

Education

In 1988, the sites in the National Estuarine Reserve Research System attracted over a quarter of a million visitors. This figure includes over 50,000 people who went on guided interpretive tours, took classes, visited interpretive centers, attended symposia and workshops, or participated in school programs. Federal assistance has been instrumental in creating opportunities for the public to learn about estuaries, coastal management, and the important role scientific research plays in preserving natural systems and resolving coastal problems.

Site visitation and participation in education programs throughout the System are growing rapidly. Once again our success is tied to timely Federal development assistance. At the South Slough National Estuarine Research Reserve (NERR) in Oregon, for instance, the completion of a visitors' center in mid-1985 resulted in a fifteen-fold increase in the number of visitors to the site --from 900 to over 15,000 in 1988. The cost of this facility, complete with interpretive exhibits, staff offices, meeting space, and parking lot was only $350,000 -- the cost of a one-family home in many coastal areas, but nearly 30 percent of the President's proposed FY90 appropriation.

Research

In the research arena, NERRA is proud to staff the only nation-wide system of estuarine research reserves under long-term protection. Scientific research supported by the Marine and Estuarine Management Division (MEMD) is addressing NOAA's national estuarine research priorities. Many of these priority topics can only be addressed at long-term study sites that have been studied long enough to know basic information about natural patterns and variations. Monitoring at these sites provides invaluable information about current trends and conditions. The reserves also serve as important reference sites in the remediation of degraded estuarine systems, such as those under study in EPA's National Estuaries Program.

MEMD's highly competitive research awards supported 117 peer revived research projects in the System from 1985 to 1989. MEMD is still the only Federal office actively directing funds to address these national estuarine research priorities on a system-wide basis. Unfortunately, MEMD is only able to fund about half of the highest ranked proposals to address priority research topics.

Support for research conducted in the System also comes from other Federal agencies, states, local governments, private foundations, and not-for-profit research institutions. Research dollars are directed to these sites because they are protected and accessible, baseline data already exist, and logistical support is available -- key factors attributable to Section 315 support. At several reserves, the availability of transportation, bunkrooms for overnight lodging, and laboratory facilities have made working at these sites cost effective for researchers.

Contributions to Coastal Management

Scientific research in the System has already contributed to coastal management in significant ways. Research conducted through the Apalachicola NERR in Florida, for instance, was instrumental in the establishment of an overall Apalachicola Bay management plan that covers all commercial species taken from the Bay and all habitats represented in the Reserve. Reserve staff also applied information gathered from these research projects to help develop the most comprehensive land use management plan in Florida. Research at other sites has improved methods of wetlands restoration and identified causes of eelgrass loss -- both critical habitats for commercially and recreationally important fish species.

The reserves actively seek to provide tools and resources, as well as information, to coastal managers. Vegetation maps developed for the Rookery Bay, Florida NERR have been used by local coastal managers to develop a county coastal management plan. Other useful resources developed in the System include manuals for designing coastal monitoring programs, computer-based geographic information systems, and research libraries.

Reserve staff have been active in hosting professional meetings that draw together groups of scientists, managers, planners, and educators. The Elkhorn Slough NERR (California), for example, recently sponsored a National Coastal Wetlands Symposium, and hosted the 1988 annual meeting of National Marine Educators Association.

Throughout the System, scientific research, estuarine education, and coastal management are integrally linked. Researchers discuss the practical implications of their work with coastal planners, and participate in decision-making about coastal management; they also take time to inform the public about their work. Similarly, in reserve education programs, students and their teachers conduct experiments and field observations to learn more about the estuaries and scientific methods, and then seek to apply what they learn to local coastal management issues.

THE IMPORTANCE OF FEDERAL SUPPORT FOR SECTION 315 GRANTS

Federal and state coastal managers are increasingly aware of the many subtle and profound linkages that exist between the actions they take and the health of our nation's estuarine ecosystems. Without sufficient understanding of the inner workings of our estuaries, we risk having substantial and unwise expenditures of coastal management funds -- at the Federal, state, and local levels. We also run the very real risk of management actions - or lack of action -- that result in serious and long-term damage to our Nation's estuaries.

Our National Estuarine Reserve Research System has tremendous potential to provide essential information about our nation's estuarine systems over the long term. The national research system is only possible through adequate funding of Section 315 state grants. States alone cannot provide the resources to establish, develop, and operate national research sites, particularly with the very high costs of acquiring estuarine coastline. States alone cannot fund a national research and monitoring agenda for our nation's most valuable coastline.

RECOMMENDED APPROPRIATION

NERRA urges Congress to appropriate $5.4 million for Section 315 grants for FY90. The states participating in the National Estuarine Reserve Research System have shown their willingness to forge a strong partnership in the development of a nation-wide system of long-term research sites. NERRA urges this Subcommittee to take a leadership role in preserving this System by adopting our recommended level of funding for Section 315 grants.

Thank you.

STATEMENT OF MARGARET A. DAVIDSON, EXECUTIVE DIRECTOR, S.C. SEA GRANT CONSORTIUM

Thank you, Mr. Chairman, for the opportunity to submit testimony on behalf of the Sea Grant Association (SGA) and the Marine Division of the National Association of State Universities and Land Grant Colleges (NASULGC). I am Margaret A. Davidson, Executive Director of the S.C. Sea Grant Consortium College Program. The SGA consists of 40 colleges, universities, research centers, industries and consortia, all dedicated to enhancing the Nation's capability to develop, use and manage our marine resources, NASULGC is composed of 149 colleges and universities with a total enrollment of about 3 million students These institutions bestow a majority of the graduate degrees granted in the country.

We submit this testimony in support of the National Sea Grant College Program, which serves as a network of over 270 colleges and universities throughout the nation. The program has built an efficient network that is uniquely positioned to effectively assist the vital partnership between the federal and state agencies by generating and widely disseminating new, relevant information fundamental to more effective natural resource management policy.

APPROPRIATION REQUEST

The Sea Grant Association requests an appropriation of $41.5 million for the Core Program, plus $11 million to fund the first phase of Sea Grant's proposed Coastal Change program.

The $41.5 million is the amount originally allocated to the Core Program for FY 88 by the 1987 landmark reauthorization bill. It appears to be a logical starting point. The modest additional funds above the original FY 88 base of $39 million would be used to begin to reverse the serious damage of past cuts and inflation on research and graduate education, and to enable small programs recently reaching, or currently aspiring to, Sea Grant college status to adequately engage their institutional capabilities in high priority national activities.

We urge that the $41.5 million be broken into two accounts: $39 million for grants to Sea Grant colleges, regional consortia, institutions and programs, and $2.5 million for administration of the program by the National Sea Grant College Program office of NOAA. This suggestion follows the precedent previously established for the Coastal Management Program. It insures continuation of the national program administration at a level modestly above current expenditures. It also establishes the level of funding to universities and other Sea Grant institutions that Congress expects to see maintained. This distinction should be helpful to all parties, including Congress, since there would be a much clearer understanding of where the money goes. Research funds to universities would still be subject to congressional set-asides, such as the one for Small Business Research, but hopefully would not be available for paying for such items as OMB's current tax of $175,000 for "management savings," or the $158,000 which is now being diverted from Sea Grant to help pay the expenses of NOAA's Estuarine Program Office. (We have nothing against the Estuarine Program Office, but we fail to see why Sea Grant funds should be diverted to pay salaries for another NOAA office, especially when NOAA has separate Program Support funds to underwrite administrative expenses for the agency.) Note: See page NOAA-151 of the principal budget submission, "National Oceanic and Atmospheric Administration: Budget Estimates, Fiscal Year 1990" for a breakdown of administrative costs: currently $2,359,000 for all administrative expenses of the Sea Grant office, INCLUDING NON-SEA GRANT ACTIVITIES.

The $11 million request for the proposed Coastal Change response is well within the FY 90 authorization level for the Core Program and the Strategic Research Initiative. AT a time when a considerable national effort on Global Change is being launched within NOAA and other agencies, Sea Grant is the primary university research and education program dealing with the area of greatest change and stress in the marine environment -- the Coastal Ocean and Estuaries. The Strategic Research Program was designed to implement a parallel effort to Climate and Global Change that focuses on the Coastal Change in a manner that is beyond the current resources of the Sea Grant program. This effort would build on past activities of the Sea Grant institutions, amplifying them at a level more nearly adequate for the purpose. The $11 million request would be allocated as follows:

Educational and Manpower Development	2 million
Advisory Services, Technology Transfer & Public Education	3 million
Strategic Research	6 million
Total	11 million

This package would pull together all of the components of the 1987 reauthorization in a coordinated response to a major public need. A copy of the program statement ("Coastal Change: The Sea Grant Response") is attached.

JUSTIFICATION

Congress, including this committee, has repeatedly cited the Sea Grant program as one of the most effective federally sponsored activities. During the 1987 reauthorization process, Congress again found that the program has made major contributions to the nation's economy and to the health of our coastline, estuaries and marine waters. The Senate Commerce Committee report emphasized the critical role that the Sea Grant network plays in developing and transferring technology and information among researchers, government managers, and the private sector. On the basis of past achievements and the potential of the network, Congress recommended new initiatives for strategic and post-doctoral research, marine affairs and international cooperation. In addition to these substantive additions to the program, the reauthorization bill called for a major increase in authorization levels, both to fund the new efforts and to restore the most damaging losses due to inflation and recent cuts.

A recent study ("The National Sea Grant College Program Economic Impact--1987"), which is attached, shows that Sea Grant research and technology transfer had an $842 million impact on the national economy in 1987. This is up from the $231 million total reported in 1981. Thus, Sea Grant remains a major investment in the nation's future. This investment continues to be endangered, but Congress has sustained the Sea Grant effort because of this record productivity.

By way of illustration, let me offer an example from my own state of South Carolina of how the unique combination of activities by Sea Grant accomplished results. In 1979, researchers at our Marine Resources Research Institute started working with hard clams to improve their potential for aquaculture. Over the next few years, applied research was conducted in cooperation with a private grower to improve the engineering processes associated with the nutritional, growth, and production aspects of the animal. After completion of this basic engineering and biological research on a pilot scale level, we turned our attention to improving breeding protocols while exploring genetic manipulation. At the same time, information gained from our earlier pilot study was disseminated through the Sea grant network, resulting in the adoption of those proven technologies by commercial clam growers on both the east and west coasts. We first improved the systems; we are now improving the animal. We have already improved the profit potential.

And now a group of private investors have just acquired a site on Edisto Island, South Carolina and are planning to spend nearly $7 million to start up a major clam aquaculture facility-based on the technology and research which we have developed. This anecdote illustrates Sea Grant's effectiveness and efficiency: fundamental research, technology transfer and assistance, to commercial return in a relatively short time. Furthermore, results from this exercise will help bridge the gap between the demise of the traditional clam fishery and the production of cultured and high-valued seafood products. There are many similar examples throughout the Sea Grant network.

It is clear not only that past contributions have been substantial, but also that Sea Grant is uniquely qualified to deal with current problems and opportunities of national concern: the need to better understand the causes and the potential solutions to the coastal water quality problem highlighted by the Office of Technology Assessment and others; concern over estuaries, critical habitat and coastal carrying capacity; a host of fisheries issues; and, the need to improve competitiveness in every sector of our economy. No other marine and coastal program can offer the capabilit~~y of Se~~a Grant--fundamental research, application, education and technology transfer/outreach.

CUTS, INFLATION AND THE CORE PROGRAM

Yet, while needs and opportunities multiply, and as a major reauthorization bill was passed and signed, Sea Grant programs have found themselves with decreasing resources to assign to even the highest priority tasks. Several cuts during the 1980s have reduced the resource base and cost increases have eroded the remainder. While NOAA's ORF budget has grown from $850 million in FY 81 to $1.27 billion in FY 89 (or 50%), Sea Grant resources have declined, both in actual appropriation and in percentage of appropriation allocated to program activities. Moreover, at the time of the writing of this testimony, reprogramming is still under consideration; it would be devastating.

Figure 1 dramatically illustrates the erosion in Sea Grant funding. The top line represents appropriations for Sea Grant in nominal dollars, which peaked at $1.8 million in FY 1981. The appropriated funding has remained constant at $39 million since 1985 The NOAA Budget Estimates includes $1,177,000 for NCRI and $282,000 for the Aquaculture Exchange Program in the Sea Grant total). This figure does not, however, reflect the across-the-board cuts in 1986 and 1988 (denoted with asterisks). Adjusted for inflation using the Consumer Price Index (CPI), funds appropriated to the National Sea Grant College Program demonstrate a marked decline in buying power. However, this figure does not tell the whole story.

The CPI is based on a standard market basket of goods purchased by the average consumer. Inflation rates for research funding are still higher, due to the cost of scientific equipment and competitive bidding for the best researchers and students. Although the real dollar amount of Sea Grant appropriations appeared to be relatively steady from 1982 to 1987, its purchasing power declined drastically. Figure 2 depicts the decline in the number of graduate students supported by 22 Sea

Grant programs between 1982 and 1987. The cumulative decline is almost 40%, reflecting the increasing costs of graduate school expenses and of competition for the best students. These students are probably the most important product of the National Sea Grant College Program. They serve as the most effective mechanism for technology transfer: when they enter industry, government or research institutions, they carry cutting edge knowledge with them. In the past 20 years, over 8,000 Sea Grant graduate students have been trained in the natural and social sciences and engineering. These are very special students. Because of its interdisciplinary and issue-oriented character, Sea Grant has given these students a broader vision and deeper understanding of marine resource and environmental problems than the average graduate student gets. The continued and increased production of these graduates is essential to the economic, political and social health of this nation and, ultimately, to our national security. Without them our valuable ocean resources will be poorly exploited and the environment misused. As a nation, we become less competitive economically and we fall behind in the coastal and ocean sciences.

For these reasons, the 1987 reauthorization legislation recommended core program funding levels of $41.5 million for FY 1988, $50.5 million for FY 1989 and $51 million for FY 1990. We are suggesting that $41.5 million be used this year as a start.

STRATEGIC RESEARCH INITIATIVE

In 1987, Congress designed the Strategic Research Initiative in order to enhance the capabilities of the Sea Grant network to address issues related to competitiveness and to the increasingly severe changes and stresses affecting the Coastal Ocean and Estuaries. It was conceived that this initiative would derive from research begun as part of the core program, but where the problem was now of a scale and nature which demanded an accelerated, enhanced effort. As defined in the legislation, the Strategic Research Initiative would focus on a few broadly identified: (1) critical resource and environmental areas that are precluded from adequate funding under other provisions of this Act because of scope, scale or need for broad university involvement; and (2) areas where the strength and capabilities of the sea grant colleges, sea grant programs and sea grant regional consortia in mobilizing talent for sustained programmatic research and technology transfer make them particularly qualified to manage strategic marine research under this section. (Public Law 100-220, 29 December 1987, 1001 STAT. 1472.)

Sea Grant has long been the nation's premier Coastal Ocean Science Program, with unique capabilities to address priority problems relating to competitiveness, technology transfer, and the coastal ocean and estuarine aspects of global change. The proposed Sea Grant Coastal Change program, if funded, would implement the Strategic Research and postdoctoral components of the 1987 reauthorization, in conjunction with an innovative public education and technology transfer initiative in areas of major public concern. If there is to be an effective national effort on coastal water quality, the activities we have outlined are essential. If they are not implemented through Sea Grant, they will have to be implemented somewhere else.

We are working very closely, Mr. Chairman, with the National Coastal Research and Development Institute, which the Congress created in 1984 to respond to the economic stress in the nation's nonmetropolitan coastal areas. The funds they have requested are essential for the final transfer of technology produced at the university level into the commercial and economic sector of our coastal states. We look forward to a continued and increasing relationship.

CONCLUSION

We are deeply grateful for the longtime and continuing support that this committee has given us. We are determined that our productivity and our emphasis on important priorities will continue to justify this support. There is great energy in our network, together with a conviction that the opportunities and the needs for the work we do are greater than ever. We look forward to continuing to cooperate with your to address those opportunities and needs.

Thank you.

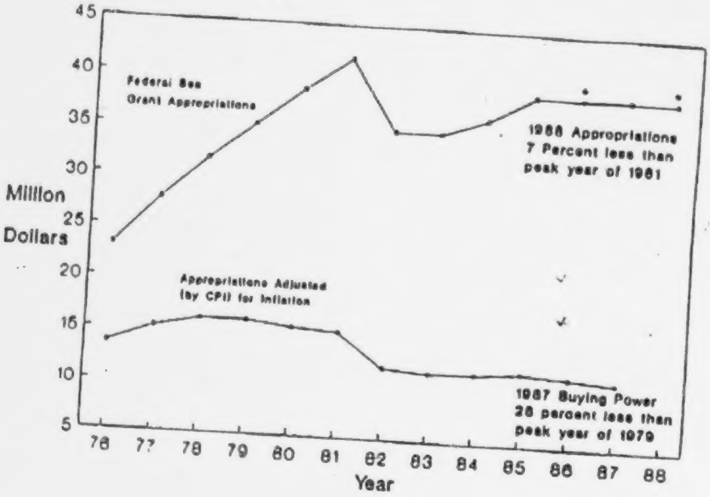
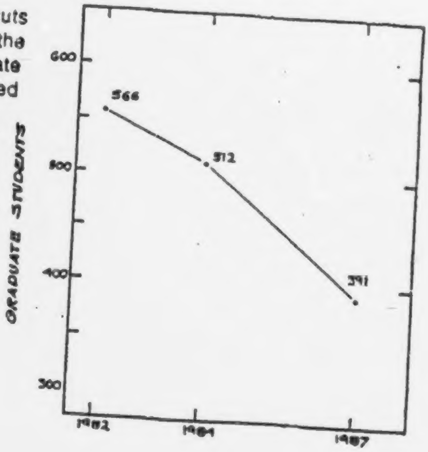


Figure 1. Sea Grant appropriations in nominal dollars and adjusted for inflation by the Consumer Price Index (CPI), 1976-1988. **Appropriation levels for FY 1986 and 1988 do not reflect across-the-board cuts of 4.3% and 6%, respectively.

Figure 2. Effect of grant cuts and inflation on the number of graduate students supported at 22 Sea Grant programs, 1982-1987. The cumulative decrease is 38%.



ADDITIONAL COMMITTEE QUESTIONS

Senator **Hollings**. Well, if there are no other immediate questions, we have a lot more from several members as well as ourselves. We will submit them for response in the record.

Dr. **Evans**. And we will respond, sir.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

WEATHER STATIONS

Yesterday the Secretary told us that the $35,800,000 necessary to maintain the Weather Service offices in 1990 would be made up by a series of reductions elsewhere in NOAA's budget. These reductions include:

$10,700,000	From the annualization of the hiring freeze, reduced travel, deferred equipment maintenance and replacement, and reduced weather service operations instituted in 1989.
14,700,000	From NEXRAD, consisting of $5,100,000 to be realized by DOD and FAA continuing the higher level of contributions for another year; and $9,600,000 from a 3 month stretch out of construction of the NEXRAD sites.
5,700,000	By reducing the polar satellite contingency.
4,700,000	By reducing: ANCS II by $1,660,000; PACFIN by $1,500,000; major procurements by $200,000; Sand Point reservation by $250,000; aircraft improvements by $550,000; and the Office of Coastal Resources Management by $600,000.

QUESTION:

With regard to annualizing the hiring freeze, reduced travel, deferring maintenance, and reduced operations, what impact does that have on weather service headquarters ability to oversee the operation?

ANSWER:

The Administration is presently reviewing options for meeting the FY 1990 funding shortfall for National Weather Service (NWS) operations. Once the Administration has decided on a course of action, a formal change amendment to NOAA's 1990 Congressional Justification will be transmitted to Congress. None of the actions being considered are expected to adversely impact the management of the NWS.

QUESTION:

The original word was that the stations would be kept open at existing levels, but Senator Baucus says that in Helena they can't get a replacement for someone on four weeks sick leave. Please outline what is meant by "reduced operations at some weather stations?"

ANSWER:

Every effort is being made to avoid reducing hours of operation at Weather stations through 1990. We will fill critical vacancies and detail personnel when unexpected absences occur where possible. The logistics of replacing staff with qualified personnel may result in temporary reductions in operations at some stations. However, we expect minimal impact on services to the public.

QUESTION:

Why wasn't the $3,361,000 budgeted for furniture for the second building of the Silver Spring complex used to make up this deficiency?

ANSWER:

The second building is planned for the National Weather Service. The funds are required to cover the cost of furnishings for this buildings. Without the funding, the NWS will not be able to move from their current woefully inadequate building.

LANDSAT

You and I share an interest in improving U.S. competitiveness. One area in which the United States has had the competitive edge for many years is in land remote sensing. However, in recent years, the Administration repeatedly has tried to terminate Landsats 4 and 5. Furthermore, we face a gap of months to years before Landsat 6 is launched. In short, we have turned over the lead in this area to the Europeans and Japanese.

QUESTION:

How would you weigh the relative importance of maintaining U.S. competitiveness in land remote sensing against the goal of space commercialization?

ANSWER:

The National Space Council, chaired by the Vice President, is conducting a policy review of the Landsat program. The issues of U.S. competitiveness in land remote sensing and space commercialization are being addressed by the Council. The results of this review will be made available to the Congress.

LANDSAT OPERATIONS

Last year the Department did not budget for the operation of Landsat 4 and 5 on the premise that they had exceeded the planned design lifetimes. When it became apparent that these satellites would continue to transmit useful data beyond September 30, 1989, the Committee provided $9,400,000 to cover their operations for six additional months.

The satellites have continued to operate and the Administration worked out transfers of additional funding of $3,000,000 from Defense, $1,000,000 from NASA, and $500,000 from Interior. That is only $4,500,000 of the $7,500,000 that is required to fund this through September 30, 1989.

QUESTION:

The final $3,000,000 for the Rescue Plan was to be provided by EOSAT, the commercial operator of the Landsat program. Has EOSAT indicated any willingness to make this payment?

ANSWER:

EOSAT has been asked several times to contribute to the cost of LANDSAT operations for the second half of FY 1989. Each time they have declined to contribute.

QUESTION:

Why did the Department assume that EOSAT had $3,000,000 to contribute?

ANSWER:

The expected level of contribution by EOSAT for Landsat operations was based on their revenue stream since the beginning of the contract and the fact that, with the exception of marketing, all of their operations costs have been paid for by the Government.

QUESTION:

What does the Administration plan to do when the $4,500,000 runs out?

ANSWER:

The Administration will operate the satellites until their practical demise.

QUESTION:

Aren't we in the same boat again for 1990 if these satellites continue to work, and how is the Administration planning to cover Landsat operations if they continue to operate after September 30th?

ANSWER:

An additional $19 million will be requested in the FY 1990 budget for operation of the Landsat 4 and 5 satellites.

MARINE RESEARCH

Last month, Senator Mitchell introduced S.587, the "Marine Research Act of 1989", to create regional marine research centers which would be administered by NOAA

QUESTION:

What is your view on the need for this new research and monitoring effort?

ANSWER:

This bill was opposed by the Administration when it was introduced last year. The Department of Commerce testified before Congress that the bill would not add to NOAA's ability to address coastal pollution issues. The Administration still feels that these problems can be best addressed through existing programs, and new ones proposed in the budget such as NOAA's coastal ocean initiative. S.587 would create an unnecessary new bureaucratic structure and would needlessly duplicate existing programs.

QUESTION:

Could such an effort be carried out through the existing Sea Grant network? The proposed Coastal Initiative? Please explain.

ANSWER:

Yes. As stated in the previous answer, such an effort would be better carried out through existing programs such as Sea Grant or the coastal ocean initiative. The President did not specifically request funding for Sea Grant in his February 9, 1989 budget document. Therefore, funding for this program will be determined through negotiations with Congress.

The Coastal Initiative further strengthens the regional approach to solve coastal ocean degradation and pollution, conserve and manage living marine resources, and protect life and property in coastal areas. The Initiative focuses on problems and in laying the scientific groundwork on which to base solutions.

NOAA FISHERIES MANAGEMENT

Looking at the number of fishing trips he has taken in recent months, President Bush appears to understand the importance and benefits of managing our Nation's fishery resources. The previous Administration annually proposed reductions of 30-40 percent for such activities.

QUESTION:

Can we expect more enthusiastic and enlightened support for NOAA fishery management and research in the Bush Administration?

ANSWER:

We expect the Bush Administration to undertake an extensive reevaluation of our programs at the NOAA, DOC and OMB review levels, as he will for all agencies, as we prepare the NOAA Fisheries budget proposal for FY 1991. This evaluation will define the appropriate nature of the Federal program which is absolutely essential for the conservation and management of the Nation's renewable, but highly vulnerable, living marine resources. The Administration will propose a living marine resources program which it believes will ensure the continued productivity and availability of these resources, and related product safety.

We expect that results of the Administration's collective wisdom, as modified by necessary fiscal constraint, will be reflected in the proposed NOAA Fisheries budget for FY 1991. However, our shared dilemma is how to fulfill the intent of legislative and policy mandates within a level of Federal spending that must, at best, be constrained. Solving this dilemma will require rethinking of how we can most cost-effectively protect, conserve, manage, and develop this Nation's living marine resources.

This will also require us to consider creative approaches to the ways in which we conduct and fund these efforts.

NOAA'S ROLE

QUESTION:

In the statement accompanying Reorganization Plan #4 which established NOAA in 1970, President Nixon stated that:

> "THE OCEANS AND THE ATMOSPHERE ARE INTERACTING PARTS OF THE TOTAL ENVIRONMENTAL SYSTEM UPON WHICH WE DEPEND NOT ONLY FOR THE QUALITY OF OUR LIVES BUT FOR LIFE ITSELF. WE FACE IMMEDIATE AND COMPELLING NEEDS...FOR A BETTER UNDERSTANDING OF THE TOTAL ENVIRONMENT--AN UNDERSTANDING WHICH WILL ENABLE US MORE EFFECTIVELY TO MONITOR AND PREDICT ITS ACTIONS, AND ULTIMATELY PERHAPS, TO EXERCISE SOME DEGREE OF CONTROL OVER THEM. ESTABLISHMENT OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) WITHIN THE DEPARTMENT OF COMMERCE WOULD ENABLE US TO APPROACH THESE TASKS IN A COORDINATED WAY."

Today, facing such long-term threats as global climate change and the deterioration of our oceans and coastal areas, the need to improve that understanding seems more compelling than ever before.

Do you believe that NOAA can provide the necessary leadership and research in these areas?

ANSWER:

The words used by then-President Nixon in 1970 are indeed even more relevant today; the need and challenge to the Nation and the world are substantial. NOAA, like the rest of the international scientific community, can build on recent scientific advances and technological developments to enhance, significantly, our understanding of natural and human-induced changes in our environment. As the Nation's environmental monitoring, prediction, and information management agency, NOAA can and must ensure an effective U.S. response to the economic, environmental, social and political issues associated with such changes.

NOAA is committed to fulfilling its responsibilities through a balance of programs designed to address specific elements of Earth's ocean-atmosphere system, including:

o weather and related hazards;
o climate and global change;
o ocean and coastal environmental quality and hazards; and
o living marine resources and marine ecosystems.

Specifically in the area of global change, NOAA, other Federal agencies, and the academic community have begun to develop a cohesive program to understand the global Earth system and develop the capability to predict change. Working largely through the Committee on Earth Sciences, the agencies developed an integrated U.S. Global Change Research Program (USGCRP) which was announced as a Presidential initiative in President Bush's FY 1990 Budget document, "Building A Better America."

NOAA is a principal participant in this science program and helped shape the framework for the national effort. The goals, responsibilities and programs of NOAA today reflect a continued commitment to the philosophy which created it. NOAA's primary mission and the ultimate goal of all its activities is to predict environmental changes--whether it be long-term threats as global climate change or current deterioration of ocean and coastal areas--and to provide related data, information, and services to the public, industry, the research community and other government agencies. Combining NOAA's personnel, facilities and ties to Universities with the funding requested in the FY 1990 budget, will enable NOAA to provide the leadership required by global scientific programs.

SOUTH CAROLINA COASTAL COUNCIL

QUESTION:

The chairman of the South Carolina Coastal Council has written me that he was informed by NOAA's Office of Coastal Resources Management that the 7.4% reprogramming would lead to a 9.6% reduction in South Carolina's Section 306 allocation.

Is this information correct, and if so, why?

ANSWER:

The initial information provided on the impact of the reprogramming was incorrect due to a computer programming error. Under the proposed NOAA reprogramming of 7.46%, the South Carolina allotment under Section 306 of the CZMA would actually be $1,188,000, or a 7.1% reduction from the original estimates.

OFFICE OF COASTAL RESOURCES MANAGEMENT

The 1990 budget includes a reduction of 18 positions and $1,000,000 for the Office of Coastal Resources Management. In addition, the plan to keep the weather service offices open includes a further reduction of $600,000. This reduction is attributed to the findings of the Inspector General. If he found that they weren't doing anything, I would agree with him.

QUESTION:

Did this office really advocate eliminating the coastal zone management program? What kind of leadership is that?

ANSWER:

The IG's report recommended eliminating the OCRM, not the CZMA programs. The DOC Inspector General (IG) identified $1.6 million in savings. Given the increased workload imposed by Congress through the 1988 Marine Sanctuaries Act, only a portion of the IG savings were included in the budget. A further reduction is not proposed as part of the package to keep weather stations open.

QUESTION:

In the elimination of the 18 positions have you included the director of this office?

ANSWER:

No, the director's position was not eliminated.

ADVANCED WEATHER INTERACTIVE PROCESSING SYSTEM (AWIPS)

We will spend millions of dollars over the next decade to buy new weather radars, improved satellites, and automated observation systems for the National Weather Service. Looking over the service's new modernization plan, AWIPS and NOAA-PORT are essential for integrating the information from these new systems into a form that can be used by weather forecasters.

QUESTION:

How does the Administration justify their proposal to cut funding for AWIPS and NOAA-PORT by more than two-thirds in FY 90?

ANSWER:

The FY 1990 Budget proposal for AWIPS is justified because the development phase will not begin until early FY 1991. Due to the linkage between AWIPS and NOAA-PORT, additional funds for NOAA-PORT are not necessary in FY 1990.

QUESTION:

Under this proposal, will AWIPS and NOAA-PORT be in place when the new radars and observation systems come on line? Please explain.

ANSWER:

AWIPS and NOAA-PORT will not be in place when the first of the new radars (NEXRAD) and surface observing systems (ASOS) are installed in FY 1990. This has been the schedule for the past several years. Under current schedules, initial AWIPS/NOAA-PORT operational systems will become available in FY 1993. Some NEXRAD and ASOS data will be distributed using the Automation of Field Operations and Services (AFOS) system, supplemented by commercial dial-up connections where appropriate and necessary. Of course, NEXRAD and ASOS data will still be available to improve local forecasts and for inclusion into the national weather models.

QUESTION:

How would failure to support AWIPS affect the ability of the Weather Service to make full use of other new equipment such as NEXRAD? GOES-NEXT?

ANSWER:

The new technology will bring noticeable improvements, however, its full benefits in improved weather warning and forecasting services will not be realized until AWIPS becomes available.

WEATHER SERVICE EDUCATION AND TRAINING

The Weather Service Modernization will increase the amount and complexity of weather information received by individual forecasters. It will also require those forecasters to use new and technically complex types of equipment.

QUESTION:

What steps are being taken by the Weather Service to train employees to make effective use of the new systems which will be available to them?

ANSWER:

Training for the Next Generation Weather Radar (NEXRAD) promises to be the largest training program ever undertaken by the Weather Service. All Weather Service operational meteorologists and hydrologists will attend a 4-week Operations Course in Norman, Oklahoma. The dates for training for these personnel will be closely linked to the date that their office receives its equipment, so that most (possibly all) of the personnel are completely trained before the NEXRAD equipment is operational at their office. The training will cover Doppler radar theory, applied meteorology and hydrology, NEXRAD products and algorithms, operational applications and station procedures, and NEXRAD system description, capabilities, and operations. The National Severe Storms Laboratory is currently developing a series of videotapes and workbooks on convection and storm structure and Doppler radar theory and interpretation; these will be distributed for prerequisite study by Weather Service personnel before attending the 4-week Operations Courses.

The Weather Service's Chief NEXRAD Instructor was recently selected and applications for six other instructor positions are currently being evaluated. The NEXRAD contractor (Unisys) is assisting the Weather Service in the development of the 4-week Operations Courses and in the training of the Weather Service instructors.

Final training implementation plans are not complete; however, the general strategy for the systems other than NEXRAD does not include centralized courses for all personnel. The training emphasis will be on the development and distribution of computer-assisted training materials for on-station study by operational personnel.

QUESTION:

I understand that the Administration has proposed to terminate the Modernization and Restructuring Demonstration (MARD). Isn't this program an important component of the education and retraining efforts? Please explain.

ANSWER:

The Modernization and Associated Restructuring Demonstration (MARD) has not been proposed for termination. This multi-site operational demonstration of the modernized and restructured National Weather Service is required by Public Law 100-685, and will be conducted. It has been rescheduled to coincide with the planned development and deployment of the modernization technologies.

MARINE MAMMALS

Last year, Congress amended the Marine Mammal Protection Act to place conditions on any nation which exports tuna to the United States. Nations which fail to establish standards for the protection of marine mammals that are comparable to the U.S. standards face loss of U.S. markets. I understand that Mexico and other Latin American nations have stated that they have not been adequately notified and that they will be unable to comply.

QUESTION:

What action has NOAA taken to ensure that foreign nations are provided with adequate notification and assistance on this matter?

ANSWER:

Following the signing of the Act on November 23, 1988, the contents of the new legislation were discussed with the Director of the Inter-American Tropical Tuna Commission (IATTC) who is responsible for the international tuna-dolphin program and holds informal discussions with the Latin American tuna fishing nations on a continuing basis. Consultations were held with the IATTC in drafting implementing regulations. Once the regulations were formalized, the Assistant Administrator for NOAA Fisheries sent copies of the amended Marine Mammal Protection Act (MMPA) and the regulations to each nation on March 3, 1989, announcing their effective date of March 7, 1989, and providing special instructions on where assistance was available. A complete package of information also was sent to each U.S. embassy and consulate, through the Department of State, to insure government to government communication and understanding on the issue.

NOAA Fisheries co-sponsored, with the IATTC, a 3-day international workshop in San Jose, Costa Rica, March 14-16, on the tuna-dolphin issue during which a complete review of the new amendments were discussed with government and industry representatives from 14 nations participating in the eastern tropical Pacific Ocean yellowfin tuna fishery. The meeting agenda also provided for consultations with individual nations to discuss the new requirements.

Currently, the Assistant Administrator for NOAA Fisheries is distributing additional information to the nations which clarifies issues raised at the San Jose workshop and reaffirms NOAA Fisheries willingness to provide assistance to any nation.

QUESTION:

In your judgment, will foreign nations come into compliance? What are the consequences for the U.S. consumers if they don't?

ANSWER:

In a joint statement issued at the San Jose workshop (see below), the principle Latin American tuna fishing nations expressed a commitment toward the conservation of marine mammals and a concern about being unable to meet the new U.S. standards within the time provided in the amendments to the MMPA.

A review of the information submitted by nations with findings under the 1984 amendments to the MMPA indicate that most nations should be able to establish a regulatory program that is comparable to the United States. A review of the dolphin mortality rate data for these nations during 1986 and 1987 indicates only Panama would meet the comparable rate standard of not exceeding the U.S. rate by 2.0 times during the 1989 season; Ecuador, Mexico, Venezuela, and Vanuatu would be embargoed. In addition, it is uncertain if the smaller nations, in particular, can meet the eastern spinner dolphin limitation of not exceeding 15 percent of their total annual mortality.

The immediate consequence to consumers, if nations do not come into compliance with the new MMPA standards, can be estimated by the amount of yellowfin tuna that would be denied entry to U.S. markets. Imported yellowfin tuna enters the U.S. in two principal forms -- frozen and canned. The frozen product is canned domestically in the U.S. and territories of the U.S. The total available supply of canned tuna in the U.S. in 1988 was about 46 million standard cases worth approximately $1.2 billion at the wholesale level.

In 1988, canned tuna imports represented 32 percent of the total supply; however, some of this supply comes from nations not fishing or canning yellowfin tuna from the eastern Pacific Ocean. Flag vessels from Ecuador, Mexico, Panama, Vanuatu, and Venezuela that fish tuna in the eastern Pacific Ocean and export frozen or canned yellowfin tuna into the U.S. account for about 8.4 percent of the total U.S. supply valued at about $100 million at the wholesale level. It is likely that the price of canned tuna to the consumer would also rise by an unknown amount if supplies were interrupted.

STATEMENT OF IATTC

The Latin American participants in the tuna-dolphin workshop organized by the Inter-American Tropical Tuna Commission, held in San Jose, Costa Rica, March 14-16, 1989, have received, with great interest, the information relating to the amendments recently introduced to the U.S. Marine Mammal Protection Act and have issued their statement:

In this respect, having got together to analyze the information, we believe it is relevant, as a preliminary step, to make the following points known.

All our nations recognize the need to care for the conservation of marine mammal populations in general, and of those dolphin species involved in the tuna fishery in particular. The clear intentions and goodwill of our governments in this matter are reflected in the adoptions and enforcement of national legislation and programs for protecting these dolphins. As a result of this, the best scientific evidence in recent years shows a marked downward trend in the mortality indices of these dolphins.

In view of this, we wish to express our deep concern about the nature and implications of the amendments recently introduced to the aforementioned U.S. law.

We wish to draw attention to the serious socioeconomic and political repercussions to which the application of this law could give rise. As evidenced by the statements of representatives of the U.S. tuna industry, these consequences would have a negative effect on owners and workers in the U.S. tuna industry, and also on U.S. consumers.

This negative effect would be much more marked in the case of our nations, in which fishing constitutes an important facet of the national economy. The measures proposed in the legislation could cause, among other things, a sharp increase in unemployment rates, a substantial reduction in foreign currency earnings from exports, and major losses resulting from the forced inactivity of the fishing fleets and canneries. This situation becomes even more serious in the case of nations which are already facing an economic crisis and the burden of foreign debts which impede our developments, this putting the socioeconomic and political stability of the region at risk.

Furthermore, we wish to emphasize that no State can unilaterally adopt, directly or indirectly, measures designed to protect and preserve marine species in international waters which affect everyone unless these reflect agreements among all nations involved. Such a State would have even less right to attempt to impose these measures which cannot lead to a de facto or de jure discrimination against the citizens of other countries. This legislation, therefore, contravenes the fundamental principles of the current law of the sea, as reflected in the 1982 Law of the Sea Convention.

As regards the conservation of these species, the States are duty bound to cooperate, and to ascertain that this cooperation is based on the best scientific evidence available.

In this respect, we note with great concern that the U.S. legislation in question seems to lack an adequate scientific underpinning. On the one hand, the law itself recognizes that "there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully"; it nonetheless lays down exact and rigid measures which also do not appear to be objectively related to the status of the dolphin populations and the aim of conserving them.

The attainment of these conservation aims could be adversely affected by the fact that the U.S. legislation does not value national efforts to end, and, worse still, might eventually discourage them.

On the basis of these considerations, and reiterating our interest in the conservation and protection of marine mammals in general and dolphins in particular, and also our desire to reach harmonious agreements through dialogue and consensus at the regional level, we invite the government of the United States to take into account the concerns we have expressed, as well as any other observations which our governments will put forward with all possible speed, and that it may reconsider the measures introduced by the amendments to the Marine Mammal Protection Act of 1972.

SALTONSTALL-KENNEDY

In 1980, Congress stated that "the industry will have the initiative in determining the pace and direction of fisheries development" under the Saltonstall-Kennedy (S-K) program.

QUESTION:

Can you confirm that NOAA adheres to this understanding of the Law and that priorities set by the industry will guide the S-K grants program?

ANSWER:

Yes. First, let me point out that funds were not requested for the S-K grants program in the 1990 Budget or in the several previous budgets. The quality of grant applications has been so poor as to not warrant Federal funding given other high priority needs. Given that Congress has repeatedly provided funds for these low priority projects, NOAA has followed the intent of the original law.

Each year, prior to developing the S-K solicitation for proposals, input is sought from representatives of the commercial and recreational fishing industry regarding recommended funding priorities for that year. The industry's recommendations provide the basis for the funding priorities which appear in the S-K solicitation each year.

FRUIT FROST PROGRAM

QUESTION:

Both Senator Cranston and Senator DeConcini have sent me letters of support for maintaining the fruit frost program.

How much did NOAA include in its 1990 submissions to the Department and OMB for this program?

ANSWER:

No funds were requested for the fruit frost program in either the FY 1990 submission to the Department or the FY 1990 submission to OMB. This specialized service is available from the private sector.

LETTER FROM NEW ENGLAND AQUARIUM

The Executive Director of the New England Aquarium has written to me of his interest in a research project on the capture, transport, cultivation, and propagation of commercially valuable bluefin tuna. The aquarium is requesting $250,000 for this project out of a total project cost of $400,000.

In addition, Mr. Prescott supports $350,000 for the right whale research initiative. NOAA has not requested any funds for this initiative.

QUESTION:

Please supply for the record NOAA's comments with regard to these concerns.

ANSWER:

The specific project proposed by the New England Aquarium has not been submitted to NOAA for review. On the basis of the apparent scope of the proposal, it would be an ambitious undertaking within the limits of the stated funding. Bluefin tuna is a valuable commercial fishery; however, the approach as proposed and understood by NOAA, would be of a lower priority than funding requested in the FY 1990 budget. Regarding the right whale research initiative, begun in FY 1986, the work is expected to be completed in FY 1989.

QUESTION:

How much did NOAA include in their 1990 submission to the Department and OMB for these items?

ANSWER:

In the development of the FY 1990 program proposals, no new research projects were identified as being of high priority concern in connection with bluefin tuna or right whales issues. As a consequence, no additional funding requests for these activities were included by NOAA in budget submissions to the Department and OMB. Specifically, right whale research funding included in prior-year appropriations was considered adequate to address right whale issues.

COLORADO RIVER FLOOD WARNING SYSTEM

We have received a number of letters about the elimination of funding for the National Weather Services Colorado River Flood Warning System. As I recall, this system was installed in 1984 and 1985 after the floods of 1983 at a cost of $2,700,000. In 1986 and 1987, $650,000,000 was appropriated for operation and maintenance. Last year, NOAA did not budget for this and Congress provided $300,000.

QUESTION:

What is the rationale for not budgeting for this?

ANSWER:

Over $4 million has been expended since 1984 to upgrade and modernize the flood warning system. The Colorado River Flood Warning System Project, provides an unwarranted level of service to a very specific region. NOAA has already invested over $4 million to provide this unique, targeted service. It is appropriate for the beneficiaries of the improvements to fund the ongoing maintenance of the system.

QUESTION:

Did NOAA budget for this in their 1990 Submissions to the Department of Commerce and to OMB? If so, how much?

ANSWER:

The NOAA budget submissions to the Department of Commerce and to OMB did not include funds for the Colorado project.

QUESTION:

What happens to the $2,700,000 in equipment that NOAA has invested in this system?

ANSWER:

The $2,700,000 was not spent entirely for capital equipment. A significant portion was originally invested in additional hydrologists (3) to develop and apply the new technology, and for electronic technicians (2) to maintain the new sensor and communications equipment associated technology. The remainder of the funds were used for preparation of the facilities for a large computer, procurement and development of the necessary computer software, and updating the data processing activity and the hydrologic models. The beneficiaries of this program will continue to reap the benefits of this Federal investment by maintaining the system.

QUESTION:

Is there any difference between this project and the Susquehanna River Basin Flood Warning System for which funds are also eliminated?

ANSWER:

No, except the scale of the two systems are different, and this is reflected by the larger funding profile for the Susquehanna system.

NOAA COMMISSIONED OFFICER TRAINING CENTER

On April 13, 1989 we were notified that NOAA plans to relocate the commissioned officer training center from Kings Point, New York to Fort Eustis, Virginia. The notification says that no reprogramming of resources is involved and that it is anticipated that annual operating costs will be reduced $100,000 below the leel requested for 1990.

QUESTION:

Just how much, in terms of positions and funding, is in the 1990 budget for the center?

ANSWER:

The FY 1990 budget contains 5 positions (4 commissioned officers and 1 secrectary) and $222,800 for NOAA's Commissioned Officer Training Center.

QUESTION:

In fiscal 1988, how many NOAA officers were trained at the center and what number are projected for 1989 and 1990?

ANSWER:

Thirty six NOAA officers attended (32 graduated) the Basic Officer Training Class in FY 1987 and 42 NOAA officers attended (41 graduated) in FY 1988.

The maximum number of officers attending each of the two 5 1/2 month Basic Officer Training Classes is dependent on the capacity of the shipboard training facility (number of officers on the ship's bridge during each watch, three watch sections per 24 hour day) and the number of training officers. Through prior experience, and in keeping with maritime practices, no more than 21 officers can adequately be trained or supervised in a class (officers per watch plus the training officer).

Future basic officer training classes can have a maximum of 21 officers in each of the two 5 1/2 month classes per year (maximum of 42 officers per year) based on the needs of the service.

The factors influencing the class size are training center capacity and projected vacancies in the Corps. Vacancies are dependent on resignations, retirements, forced involuntary separations and deaths of active duty officers. Twenty NOAA officers attended the Refresher Training Class in FY 1987 and 16 attended the Refresher Training Class in FY 1988. Again, the limiting factor on the maximum class size is the shipboard training facility. No more than 21 officers can adequately be trained or supervised in a class.

Future Refresher Training Classes can have a maximum of 21 officers in each of the three 3 1/2 week classes per year (maximum of 63 officers per year) based on the needs of the service.

Factors influencing the refresher class size are anticipated shipboard senior officer vacancies due to normal sea/shore rotation transfer, resignations, retirements, medical emergencies and emergency leave.

QUESTION:

What is involved in facilities for the training center in terms of classrooms and other facilities?

ANSWER:

Two classrooms, office space for 4 instructors, storage space for government equipment including boats, audio-visual capability; waterfront/pier/waterways/sheltered harbor are required. Technical and support facilities to include: radar, navigation and bridge simulation and certification facility; interactive, computer-assisted instruction for navigational rules training; planetarium; rigging loft; on-site damage control training; firearms range; cargo-handling simulators; marine engine repair facilities; dive training facilities; base hospital; alternative messing options; availability of on-base housing for instructors; recreational facilities; a post exchange; a commissary; reduced cost of living for staff and students; proximity to Navy and Coast Guard schools (including fire-fighting training and vessel maneuvering tank); and close to NOAA activities and support. The officer training and refresher courses were developed in response to Congressional and Executive Branch concerns following two disastrous U.S. Coast Guard Vessel accidents (BLACTHORN and CUYAHOGA). The Basic Officer Training and the Refresher Training Courses were expanded to include additional material and days at sea to insure that officers received additional training. This resulted in expansion of both courses.

QUESTION:

Is a NOAA ship kept at the center or just how is the training accomplished?

ANSWER:

A NOAA ship is not kept at the center. Small vessels are. Basic Officer and Refresher Training Courses must emphasize the operation of small as well as large vessels due to NOAA's assigned missions. Two to four days per week are devoted to vessel/ship operations. This includes skiff, launch, and small boat hands-on maneuvering, line handling, and all facets of marlinespike seamanship. During the last two months of the Basic Officer training, officers work on the vessels daily.

Training consists of an integrated mix of small boat and ship training. Training should be as realistic as possible, while providing the optimum learning experience necessary for vessel operations. Large vessel (ship) support is based on scheduling use of an operating NOAA vessel.

QUESTION:

How much will it cost to relocate the center from New York to Virginia and will there be any facility renovation costs at for Eustis.

ANSWER:

Physical relocation of the Centers will cost approximately $22,000. Facility renovations at Ft. Eustis will cost approximately $55,000.

QUESTION:

Were other locations such as Charleston, South Carolina given any consideration for this center?

ANSWER:

An extensive search for a new location for the Training Center was carried out. The following locations were considered:

CALIFORNIA MARITIME ACADEMY
STATE UNIVERSITY OF NEW YORK MARITIME COLLEGE
MAINE MARITIME ACADEMY
MASSACHUSETTS MARITIME ACADEMY
TEXAS MARITIME ACADEMY
NOAA ATLANTIC MARINE CENTER (NORFOLK)
NOAA PACIFIC MARINE CENTER (SEATTLE)
NOAA SAND POINT FACILITY (SEATTLE)
NOAA PORT FACILITY (MIAMI)
NOAA PORT FACILITY (PASCAGOULA)
NAVY BASE CHARLESTON, SOUTH CAROLINA
NAVY BASE KINGS BAY, GEORGIA
NAVY BASE JACKSONVILLE, FLORIDA
NAVY BASE SAN DIEGO, CALIFORNIA

NOAA PROGRAM DECREASES

QUESTION:

Appendix H of NOAA's budget summary lists 87 programs that are reduced or eliminated that aggregates a total decrease of $335,199,000. Yesterday I asked the secretary to supply the amounts included in NOAA's 1990 submission to the department for each of these programs.

ANSWER:

The table follows below.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
FY 1990 BUDGET

OPERATIONS, RESEARCH, AND FACILITIES

FY 1990 PROPOSED DECREASES
(Dollars in Thousands)

NATIONAL OCEAN SERVICE	NOAA Request
Mapping, Charting and Geodesy	
o South Carolina Geodetic Surveys...	0
o Vertical Control Network Program..	3,344
o Multi-Purpose Cadastre Program....	0
Observation and Assessment	
o Circulatory Survey Program........	377
o Ocean Assessment Activities.......	10,259
o California Data Buoys.............	0
o Federal/State Demo Project with South Carolina.....	0
Ocean and Coastal Management	
o Section 306 and 306A Grants.........................	0
o Section 309 Grants.........................	0
o Estuarine Reserve System Program........................	1,190
o CZM Program Management...........	1,779
o Marine Sanctuary Program..........	2,122
NATIONAL MARINE FISHERIES SERVICE	
Information Collection & Analyses	
Resource Information	
o Resource survey activities........	17,853
o Habitat Research..................	11,363
o Stock Enhance./Disease Res. (Aquaculture) Stuttgart Fac.....	1,000
o West Coast Groundfish Research/Tiburon Lab Transfer...	904
o Protected Species Research and Marine Research..............	6,167
o Salmon Treaty Research............	2,000
o Atlantic Salmon Research..........	0
o SEAMAP...........................	1,000

	NOAA Request
o Antarctic Research................	0
o Habitat Evaluation Methodology....	0
o Chesapeake Bay Studies...........	0
o Sub-Arctic Bottomfish Research....	0
o MARFIN...........................	1,000
o Right Whale Research.............	0
o Hawaii FMP Development...........	0
o Gear Entanglement Studies.........	750
o Alaska Salmon Enhancement Activities.....................	0
o Limnological Research............	0
o Yukon River Chinook Study.........	0
o Japanese Salmon Interceptions.....	0
o New England Stock Depletion Studies........................	0
Fisheries Industry Information	
o Economic and Commercial Fish Statistics.....................	9,940
Information Analyses and Dissemination	
o Near-Shore Fisheries Research/Analysis..............	21,920
Conservation and Management Operations:	
Fisheries Management Programs	
o Regional Councils.................	10,000
o Columbia River Program...........	0
o Manage Georges Bank Fisheries.....	0
Protected Species Management	
o Endangered Species Recovery Plans.	3,612
o Harbor Seals and Sea Lions........	0
Habitat Conservation	
o Habitat Conservation..............	4,953
State and Industry Assistance Programs:	
Grants to States	
o Interjurisdictional Fisheries Grants.........................	0
o Anadromous Grants................	0
o Striped Bass Research............	0
o Interstate Fisheries Commissions..	1,050
Fisheries Development Program	
o Fisheries Trade Activities........	2,000
o Product, Quality & Safety Research (PQS).................	5,470
o Fish Oil Research................	0
o Mahi Mahi Export Strategies.......	0
o Model Seafood Inspection Program..	0

	NOAA Request
OCEANIC AND ATMOSPHERIC RESEARCH	
Climate and Air Quality Research	
o Regional Climate Centers	1,092
o NCPO International Climate Panel Activities	250
Atmospheric Programs	
o PROFS	3,883
o Weather Modification grants	0
Ocean and Great Lakes Programs	
o Seafloor Processes Research (VENTS)	0
o GLERL	4,272
o SE FOCI program	0
o Sea Grant	0
o Nat'l Coastal Resources R&D Institute	0
o U.S.-Asia Aquaculture Science Exchange	0
o Undersea Research	0
o Key Largo Tropical Research Facility	0
NATIONAL WEATHER SERVICE	
Operations and Research	
o MARDI	11,000
o Flood Warning System/Colorado River	0
o Staff at Eight WSFO's	0
o Southern Region Headquarters	11,998
o Data Buoy Test & Engineering Activities	13,560
o Maintenance for Hawaii Data Buoys	0
o Pacific Region HQ with Alaska Region HQ	3,817
o Agriculture Weather Service	0
o Fire Weather Services	1,300
o Fruit Frost Program	0
o Susquehanna River Basin Flood Warning System	0
o Reduce NWS Research and Development	2,782
o Close Nonessential offices*	14,800

	NOAA Request
Systems Acquisition	
o AWIPS	50,000

NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICES

Satellite Observing Systems:

	NOAA Request
o Polar Satellites	125,515
o GOES Satellites	96,831
o Environmental Observing	51,368
o EROS Data Center Operations	0
o NOAA-Port	11,036
o Landsat Operations	0

PROGRAM SUPPORT

Marine Services

	NOAA Request
o Fleet Rehailitation Program	11,105
Reactivate Ships, Increase Days at Sea	12,900

NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICES

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o Landsat Operations	0

PROGRAM SUPPORT

Marine Services

	NOAA Request
o Fleet Rehailitation Program	11,105
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* An amendment to the budget justification, which will maintain offices, is under review within the Administration. No offices will be closed in 1990.

NOAA'S ROLE IN GLOBAL CHANGE

An independent panel of scientific experts recently released a report calling for a "Rededication of NOAA" to meet its responsibilities in a National global change research effort.

QUESTION:

Looking back at our goals for the Agency when it was established in 1970, how well do you think that NOAA has fulfilled the vision with which it was created?

ANSWER:

NOAA has successfully fulfilled and will continue to fulfill the vision of its creators.

The first ten years of NOAA's existence was a period of substantial growth and expansion both for NOAA and the Federal Government as a whole--a period which confirmed both the need for and benefits of an Agency designed to improve our understanding of the earth systems and its ocean and coastal resources. The seventies saw the addition of numerous new programmatic responsibilities, largely the result of new legislation, which identified NOAA's role in national efforts to protect and conserve our environmental resources.

Throughout the 1980's, management and programmatic decisions have focused on successful fulfillment of NOAA's primary mission and ultimate goal--the prediction of environmental changes on a wide range of time and space scales to provide government decision-makers with a reliable base of scientific information. Two examples of NOAA's ambitious goals are:

- the largest and most comprehensive national monitoring program of coastal marine environmental quality ever undertaken in the U. S., and
- a leader in the scientific community in research on the causes and potential effects of atmospheric increases in carbon dioxide and other greenhouse gases on the earth's climate.

QUESTION:

Would such a rededication benefit the Agency? If so, how?

ANSWER:

NOAA's Climate and Global Change Program demonstrates its commitment to such a rededication to meet changing needs in a changing world. NOAA's expertise, capabilities, and mission responsibilities make the Agency an integral part of this Nation's efforts to enhance significantly our understanding of natural and human-induced changes in the global environment. NOAA's early work to focus a program on prediction and information for decision-making on climate and global change has been effectively translated into a NATIONAL commitment to a U.S. Global Change Research Program with the same goal.

QUESTION:

What do you see as the top priorities of NOAA with respect to global change?

ANSWER:

A stable, long-term commitment to global change research is essential. As for its stated role within the national effort, NOAA must develop a balanced program of observations/monitoring, focused research, modeling, prediction, and information services. At this stage, NOAA's emphasis is on atmospheric chemistry, the role of the ocean, biogeochemical cycling, and the development of improved predictive models and information services.

GLOBAL CHANGE AND NOAA'S OCEAN RESEARCH

QUESTION:

While looking through the Agency budget crosscut in OUR CHANGING PLANET, I noticed that the President has requested no NOAA funds in the FY 90 budget for global change research in the area of ecological systems.

As the agency with primary responsibility for monitoring and assessing the marine environment, how do you explain this omission?

ANSWER:

The resource levels in the U.S. Global Change Research Program reflect the agencies' attempts to classify their contributions to the national program in terms of the seven principal scientific themes. The FY 90 marine environment resources for NOAA, associated primarily with base programs on the effects of climate change on fishery resources, are under "Contributing Programs"--i.e., those agency programs initiated for reasons other than global change but which "contribute" to our understanding of global-scale processes.

The objective of the NOAA Climate and Global Change Program is to provide reliable predictions of global climate change and associated regional implications on timescales ranging from seasons to a century or more. NOAA, therefore, chose to focus FY 1989 and 1990 resources on activities directly related to developing an operational predictive capability for longer-term climate change.

QUESTION:

Do we have the right balance of ocean and atmospheric research in current NOAA programs to meet our long-term needs? Why or why not?

ANSWER:

Historically, oceanic and atmospheric programs have been balanced, but the challenge of global change requires that we reconsider the mix of activities in light of new scientific understanding and research requirements. The U. S. Global Change Research Program will require that NOAA, in concert with the other participating agencies and the scientific community, undertake a serious evaluation of long-term requirements for satellite and on-site ocean observational programs and focused research into oceanic processes which affect-changes in the global environment.

QUESTION:

How do ongoing NOAA programs, like the Coastal Initiative, Sea Grant and fisheries research, contribute to our understanding of global change?

ANSWER:

NOAA is the Nation's environmental monitoring, prediction, and information management agency. All of NOAA's programs, including Coastal Initiative, Sea Grant, and fisheries research, contribute to its primary mission and ultimate goal--the prediction of environmental changes, such as climate and global changes, on a wide range of time and space scales to provide a reliable base of scientific information for decision-making.

Developing the tools and knowledge to understand global change is part of the Agency's responsibilities. NOAA's Coastal Initiative has an important role to play. For example, current efforts to understand how nutrient enrichment in the coastal ocean affect primary productivity will also provide insights that are also important to studies of the carbon cycle and global warming. NOAA is in a unique position to ensure the required integration among these programmatic themes.

NOAA'S ROLE IN THE EXXON VALDEZ OIL SPIL

We have recently experienced the largest oil spill in the country's history. Obviously, NOAA has a large role to play in assessing the damages from the spill as the Federal trustee for marine resources. I understand that this work may cost around $15 million over the next 3 years.

QUESTION:

How do you intend to pay for NOAA's damage assessment work given that the NOAA's coffers are not exactly overflowing with cash?

ANSWER:

Exxon will advance $15,000,000 to pay the Federal and State Trustees' cost of assessing damages to Alaskan natural resources resulting from the grounding of the Exxon Valdez. NOAA's expenses will be covered by this fund.

COASTAL ZONE MANAGEMENT

QUESTION:

The Coastal Zone Management Program is a unique partnership between the Federal and State governments. Through this program, states using Federally-approved management plans, attempt to balance economic development with environmental protection along the Nation's coasts. I am considering introducing legislation that would require state coastal zone management programs to review oil spill contingency plans such as that set forth by the Alaska pipeline service. If the coastal managers of a state found a contingency plan to be adequate, the contingency plan could be incorporated into the State's coastal management plan, sort of a stamp of approval.

What do you think of my idea?

ANSWER:

We cannot comment on potential legislation unless a concrete proposal can be provided which can be reviewed by all affected Federal agencies.

QUESTION:

Can you suggest other ways to ensure that oil spill contingency plans are sufficient to contain spills?

ANSWER:

The Department of Transportation has transmitted comprehensive Oil Spill Liability and Compensation legislation which is intended to strengthen the four existing oil pollution financial responsibility requirements and merge them into a unified and comprehensive program; to establish a two-tier domestic liability and compensation system financed by vessel and facility owners and by the oil industry to compensate the United States Government, the States and our citizens for removal costs and damages associated with oil spills; and to provide protection from foreign tanker oil spills by implementing the 1984 Protocols to the 1969 Civil Liability and 1971 FUND Conventions. We have reviewed this proposed legislation and believe that it would be an improvement over the current laws.

NATIONAL WEATHER SERVICE

QUESTION:

In 1979, the Department of Commerce was responsible for about 45 percent of the Federal budget for weather forecasting, operations and research. Over the past decade, that percentage has been reduced steadily to just 21% for 1989.

Is the Department of Commerce trying to get out of the weather forecasting business? If not, how would you explain this trend?

ANSWER:

First, the 21% figure is based on former President Reagan's 1989 Budget Request, which was not enacted. Commerce's share of the meteorological operations and supporting research costs is 35% for 1989 and 32% for 1990. Second, given the fluctuations in capital expenditures by year, by agency, the relative share of the Federal weather budget is not a particularly meaningful statistic. Third, the Department of Commerce is not trying to get out of the weather forecasting business. The trend is explained by the fact that DOD and DOT are undergoing major capital investments with respect to weather-related activities in the last few years and NASA is beginning major new initiatives in environmental remote sensing. The Department of Commerce is aggressively moving toward modernization and improvement of services to this country and is in no way abrogating its responsibilities.

L.J. HOOKER DEVELOPMENT PROJECT

QUESTION:

The South Carolina Coastal Council has a problem that I would like to bring to your attention. The proposed L.J. Hooker project on Hutchinson Island was found inconsistent with the S.C. Coastal Zone Management program by the S.C. Coastal Council. Hooker initially appealed the Coastal Council decision to the Department of Commerce. However, now Hooker has withdrawn its appeal to the Department over the finding, but NOAA is developing its opinion regarding South Carolina's role in the project under the Coastal Zone Management Act.

This issue is very important to my state. I want to make sure you are aware of it and will get NOAA's opinion out as quickly as possible. The Corps of Engineers is supposed to be waiting for your opinion before they act on the permit, and I want to make sure that the Corps doesn't allow an inconsistent project to go ahead in the Savannah River. I would appreciate you keeping me informed.

ANSWER:

The NOAA General Counsel (NOAA GC) has carefully considered the legal issue of whether, pursuant to section 307(c)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), one state can review for consistency with its Federally-approved coastal management program an activity requiring a Federal permit or license if that activity, although occurring totally within another state, affects land or water uses in the coastal zone of the reviewing state. Based on the legislative purpose and intent of the CZMA, coupled with NOAA's long-standing regulatory interpretation and implementation, the NOAA GC concluded that such review is permissible if the reviewing state satisfies all of the procedural requirements outlined in 15 C.F.R. 930, Subpart D, "Consistency for Activities Requiring a Federal License or Permit."

NOAA issued this legal opinion to the Army Corps of Engineers on May 2, 1989.

NOAA VESSELS AND THE EXXON VALDEZ

We have recently received a reprogramming request from the Department of Commerce that calls for laying-up (4) NOAA ships. Given the additional requirements placed on NOAA because of the Exxon Valdez oil spill, I would have thought you would need all of the NOAA vessels.

QUESTION:

What impact will laying up these vessels have on other NOAA missions as well as NOAA's efforts in Alaska on the oil spill?

ANSWER:

NOAA's oil spill response requirements for shiptime will not be impacted by a 4-vessel layup. One vessel requested to be deactivated has been reassigned to support fisheries assessment work in the oil spill area. A second vessel, previously deactivated, has been reactivated to support long-term monitoring and damage assessment activities in the Prince William Sound area. Costs of operation of these two vessels are being borne out of the environmental escrow fund established by EXXON.

WEATHER RESEARCH

As you know, I am a long-time advocate of a National STORM program. In 1984 and 1986, I introduced STORM concurrent resolutions which were passes by the Senate. The resolutions called for the development of operational and research programs to improve our nation's ability to predict severe weather events like tornadoes.

QUESTION:

What is the status of the National STORM Program?

ANSWER:

Over the past several years NOAA, in conjunction with the National Science Foundation, NASA, DOT, and several other agencies, has developed the National STORM Program Plan. The plan calls for a major national effort to improve the forecasts of severe weather and heavy precipitation. The new observational systems that are part of the National Weather Services modernization, plus special observational programs, will provide the additional detailed data for improved forecasting.

QUESTION:

I understand the importance of more detailed weather observations in providing accurate severe weather warnings. However, I also feel that improving our ability to predict severe weather is essential if we are to get full economic return from our investment in modernization. Please comment.

ANSWER:

NOAA's weather research program is currently addressing this and other issues to ensure that the full economic return from modernization is realized.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

LANDSAT

The final payment of $36.9 million is due in 1990 for the Landsat 6 spacecraft, which will be launched in 1991. There will be additional launch costs of $36.5 million in 1991.

Earlier this year NOAA and the Department of Commerce released a series of private sector studies on the future of the land remote sensing industry. One of the studies concluded that projected market revenues will not support a fully viable remote sensing industry until the next century. This suggests that the premise upon which the current commercialization program is based is false. In addition, a study by Kodak recommended that the government abandon its "go it alone" approach and develop an international consortium for the development and operation of a commercial remote sensing system. This would substantially reduce the U.S. investment as well as avoid the fragmentation of a market that cannot support a fully commercial system in the near future anyway.

QUESTION:

Do you agree with these conclusions and recommendations?

ANSWER:

The conclusions expressed in these reports are those of the contractors and do not reflect the policies or approval of the Administration. Information from these reports is being used by the National Space Council in its review of the Landsat program. The results of this review will be made available to the Congress.

LANDSAT OPERATIONS

For fiscal year 1989 the Congress provided $9.4 million for the operations of the current land remote sensing satellites, Landsats 4 and 5 -- despite the fact that the Administration requested no funding. While we understood this would allow only six months operations, we decided to give NOAA and the Commerce Department the time to develop alternative funding sources.

NOAA initially decided to terminate the operation of Landsats 4 and 5 effective April 1 due to the lack of funding. However, this decision was overturned by the White House. As I understand it, other Federal users of Landsat data as well as the contractor are expected to contribute funds to continue operations until the end of fiscal 1989.

QUESTION:

What is the status of these contributions?

ANSWER:

A total of $9.4 million is required to operate Landsats 4 and 5 during the second half of FY 1989. The Vice President was instrumental in assisting Commerce in identifying alternative funding sources so that Commerce could extend the operations period for Landsats 4 and 5. The following agencies have provided funding totaling $6.4 million: DOD, $3.0 million; DOI, $0.5 million; USDA, $0.3 million; NASA, $1.0 million; in addition, $1.6 million from the 1988 payback from EOSAT's net earnings has been applied to cover these costs.

QUESTION:

Has the contractor, EOSAT, with net profits of approximately $15 million per year, agreed to contribute?

ANSWER:

EOSAT has been asked several times to contribute $3.0 million to the cost of Landsat operations for the second half of FY 1989. Each time they have declined to contribute.

QUESTION:

FOLLOWUP: There is no budget request to continue operating Landsats 4 and 5 in 1990. What do we do next year?

ANSWER:

The Administration will request an additional $19 million for the operation of LANDSATS 4 and 5 in 1990.

GEOSTATIONARY SATELLITE CONTRACT OVERRUNS

NOAA has a contract with Ford Aerospace for five geostationary weather satellites, or GOES as they are called. The initial value of the contract in December of 1985 was about $276 million; currently the contractor is estimating a total cost of $515 million, a cost overrun of $239 million.

QUESTION:

In all previous satellite procurements done for NOAA by NASA, NASA funded all research and development costs and the cost of the first satellite. This was changed for the GOES procurement. Why? What impact did this have on NOAA costs?

ANSWER:

On February 11, 1982, NASA advised NOAA that recent budgetary realities had forced NASA to "reassess its programmatic commitments in order to pare the overall program to the guidelines of the Administration." They stated: "One result of this process has been a decision to modify NASA's role in the

Operational Meteorological Satellite Improvement Program. The required restructuring of our relationship will entail the phaseout of the specific line item in NASA's budget to provide operational system improvements as a continuing obligation." Thus, NASA indicated that they would no longer fund first unit satellites and launches.

The nonrecurring design and first unit cost for satellites and necessary ground support equipment for the GOES I-M series, is estimated to be on the order of $225 to $250 million with an additional $90 million for the cost of the GOES I launch, or a total of over $325 million.

QUESTION:

NOAA normally has two GOES satellites in position to monitor the Pacific and the Eastern United States. GOES-West has failed, so only one satellite is operational. The first of the new GOES satellites is due for launch in July of 1990. Will the problems encountered in the program delay the launch? If the launch is delayed, will NOAA have to pay launch delay penalties? Will these penalties be assessed against the contractor?

ANSWER:

Development of the imager and sounder instruments, which are on the critical path leading to launch of the GOES I, are behind schedule due to technical development difficulties. A new GOES I launch date will be determined following completion of critical vibration testing of the imager and sounder prototype instruments, now scheduled to be completed during June 1989. In accordance with the terms of the launch services contract, postponement requests by the Government are subject to postponement fees. Launching alternatives are being examined that would minimize any increased cost for launch.

There is no contractual mechanism for NASA to assess the cost of launch delays to the spacecraft contractor. The award fee structure of the contract, however, allows for reduction in fee payments to the contractor in relationship to their inability to meet schedules. Thus, Ford will earn only a portion of the available award fee as a result of delays in delivery of the GOES I satellite.

NOAA FLEET OVERHAUL

The NOAA fleet consists of 23 major vessels, ranging size from 86 to 303 feet. Two are in inactive status, and a reprogramming has been proposed to deactivate four additional ships due to the lack of funds for maintenance and repair.

The NOAA fleet and the NOAA Corps officers are subject to transfer to the Navy in the event of a national emergency under the terms of title 33 of the U.S. Code. Indeed, NOAA and the Navy have an MOU for just such an eventuality and engage periodically in joint exercises. In addition, NOAA vessels produce charts that are used by the Navy.

Last year the subcommittee assumed jurisdiction over the Ready Reserve Force of the Maritime Administration, which is designed to acquire and maintain various ships for use by the Navy in the event of national emergency. In 1990 they are requesting over $200 million to acquire such vessels.

QUESTION:

Dr. Evans, if we were able to direct the use of Maritime Administration funds so that $10 million per year over the next few years could be used to perform major overhauls and maintenance on the NOAA fleet, could you use these funds? Wouldn't such maintenance extend the life of the NOAA fleet and defer the need for replacements?

ANSWER:

Current budgets provide the resources to perform required maintenance on the NOAA fleet to maintain safety and operational capabilities. NOAA does not support the use of Maritime Administration funds for NOAA ships. These funds are necessary to maintain the Maritime Administration National Defense Reserve Fleet. Any reduction to the DRF from the President's request will jeopardize MARAD's ability to provide adequate and immediately available sealift to the Navy in support of overseas war-time operations.

GLOBAL CLIMATE CHANGE

QUESTION:

As part of the government-wide global change research program, NOAA is requesting $20 million in 1990, an increase of $11 million over the level provided in FY 1989. What is NOAA's role in this government-wide effort? How will these additional funds be used? Is there a need for complementary research by U.S. academic institutions in this area, and is NOAA working with them to develop cooperative research programs?

ANSWER:

The interagency Committee on Earth Sciences has defined NOAA's role in the U.S. Global Change Research Program as follows:

> NOAA will be responsible for: operational in-situ and satellite observation and monitoring programs; mission-directed research on physical and biogeochemical processes in the climate system, including their effect on marine ecosystems and resources; development, testing, and application of models and diagnostic techniques for the detection and prediction of natural and human-induced changes; and the acquisition, maintenance, and distribution of long-term data bases and related climate information.

To fulfill that role, NOAA's FY 1990 Budget includes a focused Climate and Global Change Program designed to provide high-priority contributions to the U.S. Global Change Research Program's objectives as follows:

OBJECTIVE: ESTABLISH AN INTEGRATED, COMPREHENSIVE MONITORING PROGRAM FOR EARTH SYSTEM MEASUREMENTS ON A GLOBAL SCALE.

NOAA's ROLE:	Operational Ocean Monitoring.	$2.5M
	Global Sea Level.............	$3.0M
	Stratospheric Monitoring.....	$1.0M
	Climate Data Services........	$4.0M

OBJECTIVE: CONDUCT A PROGRAM OF FOCUSED STUDIES TO IMPROVE OUR UNDERSTANDING OF THE PHYSICAL, CHEMICAL, AND BIOLOGICAL PROCESSES THAT INFLUENCE EARTH SYSTEM CHANGES AND TRENDS ON GLOBAL AND REGIONAL SCALES.

NOAA's ROLE:	Interannual Climate/TOGA......	$3.0M
	Trace Gas Studies.............	$2.0M
	Global Hydrological Cycle.....	$0.5M

OBJECTIVE: DEVELOP INTEGRATED CONCEPTUAL AND PREDICTIVE EARTH SYSTEM MODELS.

NOAA's ROLE:	Climate Diagnostics..........	$3.0M
	Modelling and Prediction.....	1.0M

Plans for the NOAA Climate and Global Change Program have consistently provided a role for the university community as a full and integral partner in a successful program. Throughout the evolution of the Program, NOAA has agreed that this partnership would best be reflected in a program implementation strategy that reserves at least 20% of available new resources for support of specific projects proposed by extramural (i.e., non-NOAA) investigators. FY 1989 proposals for these extramural grants are now being received and will be peer-reviewed over the summer. We anticipate a call for FY 1990 proposals in the fall with priority given to climate diagnostics, prediction, and data management proposals which complement the in-house (NOAA) projects supported through the Climate and Global Change Program.

QUESTIONS SUBMITTED BY SENATORS ERNEST F. HOLLINGS AND WARREN RUDMAN

GOES SATELLITES

COST AND SCHEDULES

The initial value of the GOES-NEXT contract for 5 satellites in December 1985, was about $276 million. As of September 30, 1988, the value was about $360 million. The contractor's estimate at completion is about $515 million.

Specifications of the contract have been changed during its life. NOAA was the driver behind some of the changes, NASA of others. The changes are a contributor to the cost growth. Between the initiation of the contract and September 30, 1988, there were 87 change orders or modifications to the GOES-NEXT contract. However, only 23 of them involved dollar value changes to the contract. Other changes were for regularly scheduled funding, award fee payments, and no cost performance specification changes.

Of the 23 dollar value changes, 7 have been negotiated for dollar values over $1 million. One change that has not been negotiated has an estimated value in excess of $1 million.

Clearly, the largest dollar value change involves the INR (Image Navigation Registration) system. It represents almost 48 percent of the dollar changes. One of the significant modifications involved with this change is the degree of instrument pointing accuracy. An early modification increased the pointing accuracy beyond the RFP requirement; a later one relaxed the requirements. The current pointing accuracy requirement, in general, is for 4 kilometers with a 99.7 percent confidence level. NOAA officials have stated that a lower requirement in the RFP was necessary in order to ensure competition, although a higher degree of accuracy was wanted. However, the agencies were unsure if the higher degree would be obtainable. Following contract award, research determined that the higher degree of accuracy was possible, and the more stringent requirement was specified through a contract change order.

QUESTION:

Please explain the INR specifications, in terms of what was originally sought by the National Weather Service, what was in the RFP, and how the specifications have changed over the life of the contract. What do these specifications mean in layman's terms?

Why were these changes made?

ANSWER:

NOAA specified that navigation accuracy of the GOES-NEXT imagery information should, in an absolute sense, be no worse than 2 km. Designs were required to be maintained so that cloud motions could easily be determined from successive images.

In an attempt to generate industry-wide participation in the Request for Proposals stage of the procurement process, NOAA agreed to less stringent image navigation and registration requirements: 6 km accuracy at the 99.7 percent confidence level.

Following contract award, Ford Aerospace was asked to study their image navigation and registration concepts, and determine if it was practical to meet the more stringent requirement desired by the NOAA. Ford recommended a number of changes, which they believed would improve the location accuracy to the degree desired by NOAA. A contract modification was made to Ford to incorporate these changes; the specification was revised so that the location accuracy of data should be 2 km at the 99.7 percent confidence level. The estimated cost of this change ($13 million) was well within NASA estimates and the NOAA budgeted funds for GOES.

Well along in the contract, the augmented specification was found to be extremely difficult to meet. When it became obvious that cost for the program was growing well beyond Ford's estimate at the time the contract modification was made, NASA reviewed the spacecraft specification and identified the area of image navigation and registration for which relaxation of this specification would ease the Ford task and provide for significant cost avoidance. The specification was changed to require a 4 km location accuracy at the 99.7 percent confidence level.

In layman's terms, cloud locations must be determined precisely from satellite imagery so that weather warnings can be localized, avoiding false alarms. These accuracy requirements are in keeping with AWIPS 90 needs.

QUESTION:

Which agency (NASA or NOAA) was the primary instigator behind changing the INR specifications?

ANSWER:

The decisions to change the INR specifications were initiated by NOAA and cancelled out by NASA. NASA recognized that NOAA desired a higher degree of pointing accuracy than was required by the RFP and initiated a study by Ford to determine if there were improvements that could increase the system accuracy. When Ford proposed changes that were expected to improve the pointing accuracy to meet the original requirements and within budget, NOAA and NASA endorsed the proposed improvements.

QUESTION:

To what extent have the INR specification changes contributed to the cost growth and schedule slippage?

ANSWER:

When originally recommended to NOAA, the INR changes were estimated by Ford Aerospace to cost on the order of $13 million. When the change order was finally negotiated at the descoped level, two years later, the cost had grown to over $33 million.

Schedule slippage cannot be directly attributed to the image navigation and registration system. Development of the imager and sounder instruments have remained on the critical path, which defines the final delivery date for the satellite system. Though development of satellite components (including the INR) at Ford have fallen behind original projections, they have not impacted the delivery date for the satellite.

QUESTION:

Would this contract be on schedule and within cost if the INR specification had not been changed?

ANSWER:

No, as indicated above, the imager and sounder instruments have defined the critical path for the GOES I development.

QUESTION:

How will the Weather Service's operational capability be changed when the INR, as it is currently specified, becomes available?

ANSWER:

As stated in the NWS requirements document issued in 1983, "Forecasting techniques will gradually improve, over all scales and time periods; from local area short period forecasts through one day regional forecasts up to global medium-range forecasts extending over 3-10 days, and even beyond that into seasonal and climate forecasts. GOES data will be especially valuable for short time periods and 24 hour regional forecasts."

"The NWS expects to develop a new generation of interactive-processing and display systems that will accommodate high resolution digital satellite data. These systems will be deployed at the National Centers, regional and local forecast offices under a modified field structure. The principal focus will be on the short-term forecasting of local severe weather and related events."

In summary, the future use of geostationary satellites will be characterized by:

- Expanded operational use.
- Increased demand for improved reliability and immediate availability.
- Emphasis on short period forecasts and warnings over local areas.
- Increased use of numerical data.
- Flexibility for growth, development and research.
- Accompanying developments in dissemination, meteorological interpretation and display systems.

QUESTION:

In light of all the modifications that have been made, is the satellite being built today still basically the same satellite that was contracted for in 1985? If yes, then why were the changes made? If no, why not?

ANSWER:

The spacecraft being built today is basically the system proposed by Ford Aerospace, and placed on contract in 1985. However, changes were incorporated to increase operational flexibility, simplify development constraints imposed by mass limitations, and improve performance characteristics. The major changes incorporated into the contract include:

1. Enhanced Image Navigation and Registration. This change was aimed at improving system performance characteristics to better match the original requirements stated by NOAA.

2. Increased Mass Margin. This change was made to remove mass-constrained design limitations which were expected to add to

system cost, incorporate components such as command encryption, and to accommodate growth in payload capability beyond initial expectations.

3. Launch Vehicle. The satellite was originally designed to be launched by the Space Shuttle but will now be launched by a commercial expendable launch vehicle. This change removed the second stage solid motor from the satellite design.

QUESTION:

How unique are the capabilities of the GOES-NEXT satellite going to be? Have its capabilities ever been demonstrated or used before? If no, was the Congress adequately informed when it approved the program that NOAA was going to push the state-of-the-art in the level of sophistication and precision required?

ANSWER:

The GOES satellite, by its very nature, is unique. Since only the United States, the European Space Agency, and Japan operate meteorological satellites in geosynchronous orbit, developments for this purpose must use technology that goes beyond that required for "simple" communications satellites. The satellite and instrument designs have heritage in programs flown in the past. Ford Aerospace has based the satellite bus design on the INSAT satellite first launched in 1981, which provides communications and meteorological imaging services for India. The ITT instruments have heritage in the designs flown on the NOAA polar satellites and on the INSAT satellite.

The GOES-NEXT system is evolutionary in nature. That is, the requirements go beyond those of satellites currently in orbit, but not so far as to require revolutionary design concepts to meet performance requirements. At the time this program was approved, and funding provided by the Congress, the magnitude of the design effort expected was represented by NASA cost estimates which NOAA used as a basis for budgets approved by the Congress. The contractor's technical proposal, received as a part of the competitive process in 1984/1985, confirmed the NASA/NOAA assessment of that time.

QUESTION:

Did NOAA and NASA underestimate the degree of difficulty in developing and manufacturing the equipment needed for these satellites? If yes, to what do you attribute this underestimation? If no, why are we seeing such large cost growth and why have you been so surprised by it?

ANSWER:

In retrospect, NASA and the contractor underestimated the complexity of the GOES-NEXT development. It is also apparent that the delays in development of the imager and sounder instrument resulted from a lack of experienced subcontractor personnel. The underestimate of complexity is believed to stem from the need to rush the development, without the benefit of detailed technical studies of the system, in order to assure continuity of GOES coverage. By conducting "Phase B" system definition studies prior to entering into development contracts of this kind, more accurate plans and estimates are possible. To compensate for the absence of a Phase B study, $3.4 million was put into the contract for performing ad hoc studies and $36 million was budgeted for contract changes believed to be necessary.

NASA officials believe that the number of modifications (and resulting cost increases) are due, in part, to the lack of a more traditional NASA-phased program. At the program initiation, NOAA did not want any Phase B (Definition and Preliminary Design) studies done. Such studies would have addressed issues as the costs, technical challenges involved, and mission requirements. Without such studies, NASA had to have Ford go right into a production (Phase C/D) program.

QUESTION:

I understand that this program skipped the usual studies of the technical challenges, mission requirements, and costs. Why didn't NOAA want these studies done?

ANSWER:

At the time procurement was initiated, two earlier generation GOES satellites were being qualified for launch. A careful review of projected launch schedules and satellite lifetime expectations, tempered by the realization that launch or premature satellite failures were always a possibility, clearly indicated the need for early delivery of the GOES I satellite. Subsequent failure of the GOES G satellite to achieve orbit in 1986 demonstrated the soundness of this reasoning. Although the deletion of Phase B studies, which would have required 12-18 months to complete, was regrettable, NASA and NOAA agreed to this process to minimize the gap in coverage. Therefore, NASA went directly from the requirements definition phase, with accompanying system feasibility (Phase A) study, to hardware procurement with NOAA concurrence.

QUESTION:

What effect would performing Phase B studies have had on the cost estimate increases we have seen with this program?

ANSWER:

The Phase B studies should have enabled an improved cost estimate for the program, as well as an indication of the areas where the design complexities existed.

The improved cost estimates would have allowed better planning of the program, perhaps by eliminating high-cost components. It would not necessarily have resulted in lower costs for the system being procured today. Current costs are associated with the complexity of design, the magnitude and experience level of staffing employed to complete the work, and the delays associated with delivery of critical components.

This program specifies Class S for all active parts. Class S parts have a high level of manufacturing requirements. The Class S requirement was included in the RFP and was know by Ford. Ford, however, underestimated the difficulty in obtaining the parts and having them meet the specifications. Ford was excluded from using a number of its regular sources of materials. In some cases, Ford had to dual source materials to insure availability and delivery of long-lead items.

QUESTION:

Why were Class S parts a requirement for GOES-NEXT?

ANSWER:

Class S parts require special screening to provide a very high probability that they will operate successfully in-orbit for the full duration of the mission. Use of these parts provides improved system reliability, which in turn is expected to reduce overall program costs by assuring longevity in space. NASA believes use of Class S parts are essential for satellites expected to operate for five years.

QUESTION:

Have Class S parts been a requirement before on GOES satellites?

ANSWER:

Yes, Class S parts were used for several components of the GOES G and GOES H satellites.

QUESTION:

What effect have Class S parts had on the cost and schedule problems with this program?

ANSWER:

Though the cost of the Class S parts is somewhat higher than parts bought to other standards, and deliveries somewhat delayed, neither has caused a major delay of the GOES I satellite. Launch of GOES I is being paced by development of the imager and sounder instruments.

QUESTION:

Are the Class S problems being experienced by Ford common throughout the industry?

ANSWER:

Yes, there are similar problems with other instrument and spacecraft contractors. In some cases, the DOD priorities for certain programs have added to the delay experienced in obtaining parts to meet needs for the GOES program.
Prior to the current GOES contract, NASA funded the initial R&D satellite for NOAA environmental satellite systems. NOAA, through the Department of Commerce, then assumed funding

responsibility of the operational satellite systems. This arrangement was changed for the GOES-NEXT contract in that NOAA is also funding the R&D satellite.

QUESTION:

Are any of the cost and schedule problems of GOES-NEXT attributable to the change in funding arrangement for such systems between NOAA and NASA?

ANSWER:

Delivery of the GOES I satellite for launch would not have been either delayed or enhanced if NASA had been responsible for funding for the development of this satellite.

QUESTION:

What would be the advantages and disadvantages to NOAA of returning to the former funding arrangement?

ANSWER:

Advantages:

1. NASA may take a more aggressive role in managing a program, in competition for the limited staff available at the Goddard Space Flight Center, when NASA funds are used for the development.

2. The larger NASA budget may accommodate cost increases that overwhelm the ability of NOAA to provide development funding.

3. NASA may have the flexibility to incorporate improved technology without the constraints imposed by the NOAA budget.

Disadvantages:

1. NASA might be less inclined to initiate development of new generation satellites necessary to meet NOAA requirements given NASA-wide program priorities.

2. NASA research interests and requirements could drive development of instruments beyond that needed for operational use.

AWARD FEES

According to the contract with Ford, NASA periodically reviews Ford's performance and can award all or part of an available award fee. According to procedure, certain amounts of unawarded fees may be available for award at the completion of the contract. Ford, in turn, has a similar contractual arrangement with ITT.

QUESTION:

How much total award fee is available under the GOES-NEXT contract, and what are the criteria for earning it?

ANSWER:

The total award fee for the GOES I-M (GOES-NEXT) is $24.3 million, including a base fee of $8.1 million. Of the $24.3 million, 40% is available to be earned by in-orbit performance. A portion is also associated with award for meeting predefined allowable cost allocations.

In accordance with the NASA Performance Evaluation Plan, the Contractor's performance is evaluated on the basis of efficiency, ingenuity, responsiveness, perceptiveness, thoroughness, timeliness, resourcefulness, documentation, and accuracy. The periodic evaluation considers the design, fabrication, assembly, integration and test, delivery, and pre- and post-launch support of the GOES I-M.

QUESTION:

How much award fee has Ford received, and what percentage is that of the total award fee available under the contract so far?

ANSWER:

Ford has received $4.6 million of the award fee to date. This represents 57% of the base fee available. This assumes that no fee will be paid for meeting their final allowable cost allocation (i.e., that the overrun will exceed prescribed limits).

QUESTION:

Is the unawarded fee lost to Ford entirely? If not, how much of the unawarded amount is Ford still eligible to receive?

ANSWER:

In any evaluation period for which the Contractor earns more than 70% of the total available award fee, unearned fee in the Milestone management category may (at the Government's discretion) be rolled over. $47.5 thousand of the unawarded fee has been "rolled over", of which Ford earned $35.9 thousand in subsequent evaluation periods. Ford has two opportunities to receive award fee on Final Allowable Costs. For the initial evaluation they received none.

QUESTION:

In light of the cost growth and schedule delays, how low an award fee percentage could be given to Ford by NASA, or better yet, should Ford be receiving any award fee at all?

ANSWER:

The Contractor's performance is evaluated triannually in the category of Overall System Performance. Depending upon the evaluation for that period, the Contractor's ratings may range from Unsatisfactory to Excellent. Performance at the lower levels is deserving of little or no fee for that period.

Almost 40% of the available award fee has been set aside for evaluation of the five year performance in-orbit of each of the five spacecraft and for the Contractor's performance in meeting the estimated final cost of the contract (Final Allowable Cost category).

The administration of the award fee is in accordance with NASA Goddard Space Flight Center Management Instructions. This establishes procedures for a uniform evaluation in accordance with NASA policy.

QUESTION:

What other fee (profit margin) does Ford receive on a regular basis under the contract? What is the total amount of this fee and how much has Ford received so far?

ANSWER:

The GOES I-M contract provides for a base fee. The present contract value of the base fee is $8.1 million. Ford has received $4.6 million to date.

QUESTION:

I understand that Ford similarly evaluates ITT's performance in determining award fee amounts. What percentage of the total award fee has ITT earned so far?

ANSWER:

ITT has earned 59 percent of the available award fee to date. Recent period award fee allocations have been in the 15-25 percent range, recognizing the magnitude of delay and cost overrun at ITT.

QUESTION:

How much of the unearned award fees will still be available for award to ITT at the end of the contract or, conversely, how much has ITT's poor performance cost it in forfeited award fee?

ANSWER:

ITT has lost about $435 thousand of their available award fee to date.

LAUNCH DELAY

In early March 1989, the performance and schedule situation at ITT reached a point where the proposed July 1990 launch could be adversely affected. Although the initial launch date has not yet been officially delayed, the most recent unofficial launch date is late fall 1990. One NOAA official said that an early 1991 launch date is not out of the question.

QUESTION:

Is it true that delays in equipment development are about to cause the first launch delay?

ANSWER:

Development of the imager and sounder instruments, which are on the critical path leading to launch of the GOES I, are behind schedule. Ford expects to recommend a firm planning launch date following completion of critical vibration testing of the imager and sounder instruments, now scheduled to be completed during June 1989.

QUESTION:

What is the most likely, first launch date now?

ANSWER:

Development of the imager and sounder instruments, which are on the critical path leading to launch of the GOES I, are behind schedule. Ford expects to recommend a firm planning launch date following completion of critical vibration testing of the imager and sounder instruments, now scheduled to be completed during June 1989.

QUESTION:

How much will this delay increase the cost of the program?

ANSWER:

Ford Aerospace has estimated that spacecraft costs increase on the order of $7.0 million for each month of delay.

QUESTION:

Can we expect further delays?

ANSWER:

At this juncture it is impossible to state unequivocally that the spacecraft qualification will be completed on a specific schedule. We expect to provide a more definitive launch schedule after the prototype imager and sounder instruments have completed vibration testing in June.

LAUNCH SERVICES CONTRACT

QUESTION:

A delayed launch not only increases program costs, but potentially launch services costs as well. General Dynamics has a contract with NASA to provide launch services for the GOES-NEXT satellites. The contract contains a number of clauses relating to delays. Some of these clauses allow penalties to be imposed on NASA/NOAA for launch delays. What impact might this delay have on the cost of the launch services contract?

ANSWER:

The current launch date for GOES-I in the Launch Services contract is July 1990. In accordance with the terms of the contract, postponement requests by the Government are subject to the following postponement fees:

Months Prior to Launch Date - when Postponement is Requested	Dollars Per Calendar Day of Delay	Maximum Postponement Fee - Percentage (%) of Launch Services Price
23/24	$1,900.00	1
21/22	3,800.00	2
19/20	5,800.00	3
17/18	7,700.00	4
15/16	9,600.00	5
13/14	11,500.00	6
11/12	13,500.00	7
9/10	15,500.00	8
7/8	17,300.00	9
1/6	19,300.00	10

QUESTION:

How much will the penalties be if the Government does not have the payload ready to go when scheduled?

ANSWER:

The terms of the postponement clause, discussed above, shall apply unless the delay is due to circumstances arising solely beyond the control of the Government and not due to the fault of the Government (e.g., Acts of God, strikes, fires, etc.).

QUESTION:

What steps are NASA and NOAA taking to minimize these increased costs?

ANSWER:

NASA and NOAA plan to enter into negotiations with General Dynamics, in the near future, to adjust the overall launch schedule.

QUESTION:

NOAA and NASA may exchange launch dates for the first GOES-NEXT [GOES-I] satellite and another NASA payload so as not to disrupt General Dynamics launch flow. How would this exchange work?

ANSWER:

Should GOES I not be available for a July 1990 launch, if it were slipped by three or more months, it is possible that a planned NASA launch could be moved up. This should substantially decrease postponement penalty for the GOES I launch and be beneficial to NASA's research program.

QUESTION:

What regular NASA payload is involved and what will it cost to delay its launch?

ANSWER:

The NASA payload is the Combined Release and Radiation Effects Satellite (CRRES). It's launch would be moved up, not delayed.

QUESTION:

NOAA officials are seeking to have the launch services contract renegotiated beginning later this year. Even without a delayed first launch, NOAA officials say that renegotiation is necessary for the contract to comply with the President's fiscal year 1990 budget which calls for stretching out GOES launches. Since the contract period will be longer, the out-year costs have the potential to increase. In addition, because NASA/NOAA will be renegotiating a sole source contract, the potential for cost increases is even greater. If there is a stretch out of launches, what will be the additional cost to the government in the long-term?

ANSWER:

The stretch out of launches could result in short-term savings to the Government. The actual cost of the renegotiated contract will not be known until negotiations are completed. Short-term savings will result from delaying launches. In addition, the protracted launch schedule will maximize the GOES system recovery time resulting from a launch failure.

QUESTION:

Isn't the government at a negotiation disadvantage since the contractor already has a contract and the satellite is currently being designed for its ELV alone?

ANSWER:

The Government retains some advantage in the negotiations because GOES L/M launch services are an option. Having an assured five launches will improve General Dynamics' position in the commercial launch business environment.

QUESTION:

Can the GOES-NEXT satellite be modified and adapted for launch on other ELVs, such as the Delta or Titan, or on the Shuttle? At what cost and schedule delay?

ANSWER:

Proposals received from the Ford Aerospace Corporation and the Martin Marietta Company indicated that the GOES could be adapted and launched by a Titan III. In addition, the GOES is Shuttle adaptable. The satellite could be adapted for a Shuttle launch within 30 months. The cost to modify GOES for flights on a Titan III or on the Shuttle would have to be determined following a detailed study. In both cases, use of a perigee stage on the satellite would be required at an increased cost.

QUESTION:

Has the GOES project become as dependent on a single launch vehicle as NASA and the United States were on the Shuttle prior to the Challenger accident?

ANSWER:

No, as noted above, the GOES is Shuttle adaptable. In addition, the spacecraft could be adapted for a Titan launch. Since there are considerable cost penalties for maintaining multiple launch vehicle compatibility, NASA and NOAA have maintained the Shuttle adaptability rather than full compatibility as a prudent and cost-effective way of managing Government resources.

OVERSIGHT

Communications between NASA and NOAA appear to be open and frequent, but with some degree of tension because of differing agency motivations -- NASA being developmentally oriented and NOAA being operationally oriented. Ford and ITT officials said that the different signals given by the two agencies has caused them some degree of frustration, even though only NASA can authorize changes to the contractor's efforts.

Although NOAA does not have any direct contract management authority, it participates in all program and status reviews and has staff resident as NASA's program office. NOAA also receives a variety of reports on a regular schedule from Ford and ITT.

QUESTION:

How would you characterize communications and cooperation between NASA and NOAA?

ANSWER:

Communications and cooperation between NASA and NOAA are excellent. NOAA technical and mid-level management work closely with the NASA Project Office responsible for procurement, development and launch of NOAA satellites. This assures adequate flow of information between the two agencies and guards against misunderstandings that could occur during the development phase of the program.

At senior levels, NOAA participates in Senior Management program reviews and executive sessions where program direction is determined. There are frequent discussions between the NOAA Assistant Administrator for Satellite and Information Services and the NASA Associate Administrator for Space Science and Applications.

QUESTION:

How could NOAA not know about the last huge cost increase and why wasn't this committee kept better informed?

ANSWER:

NOAA was informed early last fiscal year of NASA's estimate of a projected very large cost growth, following an intensive study that had been requested by NOAA. Committee staff was well briefed more than once on the GOES contract situation. The FY 1990 President's budget accounts for the NOAA estimate of the cost increase.

QUESTION:

What action has NOAA taken, or will it take, to control cost growth?

ANSWER:

NOAA initiated a detailed program reassessment early in 1988. As a result of this activity, some program requirements were relaxed as a cost measure. The changes implemented were estimated by NASA to provide a cost avoidance of $100 million.

In addition, NOAA has arranged with NASA to restructure the contract to one that incorporates a ceiling price, limiting the total funding obligations for the program. The contract restructuring effort is tied to delivery of critical spacecraft flight components.

QUESTION SUBMITTED BY SENATOR MARK O. HATFIELD

MITCHELL ACT HATCHERIES

QUESTION:

The FY 1990 budget requests no funding for the operation and maintenance of the Mitchell Act fish hatcheries on the Columbia River. In light of the fact that those hatcheries are the result of a Federal commitment to mitigate the impact of the construction of the Federal dams on the Columbia River, and to fulfill treaty obligations to Indian tribes and Canada, why does the Administration continue to delete these funds?

ANSWER:

Federal mitigation responsibilities were fulfilled with the construction of the hatcheries. Responsibility for funding the operation of the hatcheries is more appropriately the responsibility of the states and/or the beneficiaries of the hydro-electric power and water diversions associated with the construction of the Federal dams on the Columbia River. Legislation will be proposed to transfer funding responsibilities to an appropriate non-Federal source. The Federal Government would retain management oversight of hatchery production and release timing to ensure consistency with Federal fisheries management objectives and treaty responsibilities.

QUESTIONS SUBMITTED BY SENATOR BOB KASTEN

SUPERCOMPUTER UPGRADING

Mr. Evans, you mention in your statement the upgrading of the computer capabilities of both the National Meteorological Center and the Geophysical Fluid Dynamics Laboratory to Class 7 capability. I endorse these projects. As we look at such issues as global warming and ozone depletion, many witnesses at our hearings in the Commerce Committee have stressed the importance of more and better knowledge of the dynamic forces interacting in the atmosphere and the oceans.

Much of this must be accomplished through modelling and simulation such as that undertaken at the Geophysical Fluid Dynamics Laboratory. Our upgrading of the computers at the National Meteorological Center is overdue, and I am glad to see the Administration's budget reflect these two priorities. $7.8 million is in the budget for the NMC upgrade and $3.1 million for the GFDL.

QUESTION:

Will these funds be used for the purchase, lease, or lease to purchase of these computers?

ANSWER:

We will follow the Federal Information Resources Management Regulation (FIRMR) which requires us currently to consider all acquisition alternatives which can meet our user's needs. The alternatives proposed may include purchase, lease with option to purchase and straight lease.

QUESTION:

It is my understanding that there is only one U.S. manufacturer of these sophisticated computers, all of the others being Japanese. Are you discussing this project with both U.S. and foreign companies?

ANSWER:

Federal law requires that we seek competition when procuring new computers by placing a public announcement of our needs in the Commerce Business Daily. The law requires that we seek competitive bids when procuring these computers, but does not prevent the purchase of computers form a single vendor if that company is the only one that can provide the necessary equipment.

QUESTION:

I would like to think that we would see these funds supporting the sole U.S. supplier of this kind of equipment. Could you give me your thoughts in this regard? After an incident at the Patent and Trademark Office a couple of years ago, I would hope that you are not coming into this with any predisposition toward the foreign manufacturers.

ANSWER:

We have no predisposition toward the foreign manufacturers. We will comply with all laws and regulations in conducting our procurements.

GREAT LAKES RESEARCH OFFICE

QUESTION:

At the recent meeting between President Bush and Prime Minister Mulroney, Prime Minister Mulroney committed $110 million for clean up of the St. Lawrence River and $125 million for similar efforts on the Great Lakes. Although President Bush did not get into specifics, he agreed to increase U.S. support for similar actions. Yet our actions on the environmental management of the Great Lakes languish.

Three years ago we authorized the creation of the Great Lakes Research Office to increase and coordinate environmental research and management on the Great Lakes. In part due to parochial fighting here - but largely from lack of Administration leadership since there has never been a budget request - we have never funded this office.

Would you square for me Presidents Bush's commitment with the failure to request funds for this office?

ANSWER:

The Administration maintains that sufficient coordination of Great Lakes research already exists.

RESEARCH OFFICE AND OMB

QUESTION:

It is my understanding that OMB has indicated its opposition to a transfer of funds from EPA to NOAA to operate the Great Lakes Research Office. Is this true?

ANSWER:

The Administration does not support establishment of the office since sufficient coordination of Great Lakes research already exists. For the last two years, EPA Appropriation Acts have prohibited passthrough of EPA funds for NOAA to establish the office. The FY 1990 Appropriation language accompanying the EPA budget does not alter this prohibition.

QUESTION:

If so, does NOAA concur with that position?

ANSWER:

NOAA, as part of the Administration, believes that considerable coordination of research already occurs in the Great Lakes and has not requested that the appropriations language be changed.

QUESTION:

Did NOAA request funds for this Office?

ANSWER:

No.

QUESTION:

Do you believe the environmental management of the Great Lakes would be improved with the operation of the Research Office?

ANSWER:

The Administration believes that considerable coordination already occurs among resource managers in the Great Lakes and that programs already in existence should take responsibility for coordinating their programs.

CLIMATE CHANGE

It is my understanding that NOAA has proposed that the Great Lakes Basin be used as the first regional case study to review the potential consequences of global warming.

QUESTION:

Would you briefly describe the kinds of analyses, data collection and policy recommendations you envision in this study and the resources you will need to complete this work?

ANSWER:

It is premature to discuss this idea before it is fully analyzed by NOAA and reviewed within the Administration.

WISCONSIN DEPARTMENT OF ADMINISTRATION

QUESTION:

The Office of Oceans and Coastal Resource Management has proposed major reductions in funding of state CZM programs.

This will result in vastly reduced coastal planning and have a very negative impact on coastal communities.

I am going to give you a copy of a letter describing the impact such action would have on Wisconsin. I want you to respond for the record how these impacts can be justified.

ANSWER:

All Congressional "add ons" to the FY 89 budget are proposed for reduction in order to fund the shortfall in personnel costs in the National Weather Service which is considered a priority. The initial information provided to the states on the impact of the reprogramming was incorrect due to a computer programming error. The Wisconsin allotment would be $744,000 not $722,000. The impact of this proposed reduction will be shared equally among the coastal states with approved coastal programs.

April 6, 1989

The Honorable Robert W. Kasten, Jr.
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Kasten:

Recently, a national Coastal Management program managers meeting was held at Bethesda, Maryland. Of major importance to Wisconsin and the remainder of the coastal states is a funding reduction proposed by the Office of Ocean and Coastal Resource Management. Nationally, the overall program reduction amounts to 7.46% of the funding available to the individual states. In the case of Wisconsin, the actual funding reduction is approximately 9.6% or $77,000.

A vast majority of the Wisconsin program is direct grants in aid to coastal communities. The effect of this reduction will mean approximately a 13.6% decrease in the total funds available from this current year funding level for either low cost construction (public access) or for technical assistance (planning studies).

The Wisconsin program, in conjunction with the other twenty-eight coastal states or territories, can not maintain an adequate coastal program faced with these proposed federal funding cuts; thus, I do request your assistance in seeing that this proposed action by the Office of Ocean and Coastal Resource Management is terminated.

Thank you for your assistance in this matter.

Sincerely,

James R. Klauser
Secretary

QUESTIONS SUBMITTED BY SENATOR BROCK ADAMS

QUESTION:

The NOAA budget cuts funding for the National Marine Fisheries Service from $167.6 million in 1989 to $99.4 million for FY 1990. In reviewing the NOAA budget figures, it appears to me that over $25 million will be eliminated from programs and activities in

Washington State. First, could you provide a breakdown of the programs cut in Washington State? Second, on what basis were these program and staffing reductions justified?

ANSWER:

The following is a summary of the proposed FY 1990 program reductions which would affect the NMFS Northwest Region programs, which are managed out of Seattle, Washington but which range operationally from waters off Oregon to the Bering Sea.

	FY 1990 NMFS Reduction ($K)	FY 1990 NW Region Reduction ($K)
Resource Information		
- Resource survey activities	($2,000)	$402
- Habitat research	($5,133)	907
- Stock enhancement and disease research	($4,344)	305
- Pacific Salmon Treaty	($4,708)	4,601
- Protected species research	($1,200)	564
- Marine mammal research	($1,506)	1,130
- Gear entanglement studies	($706)	706
- Sub-arctic bottomfish research	($753)	753
Fisheries Industry Information		
- Economics and commercial fisheries statistics	($2,919)	82
Fisheries Management Programs		
- Regional Fishery Management Council (Budget for Pacific Council administered in Headquarters)	($3,766)	
- Columbia River programs	($9,300)	9,300
Habitat Conservation		
- Habitat conservation programs	($1,883)	48
Grants to States		
- Fisheries grant-in-aid programs	($6,655)	1,360
Fisheries Development Program		
- Fisheries trade activities	($1,388)	146
- Product quality & safety research	($4,400)	1,124
Total	50,661	$21,428

The rationale for the selection of the program elements proposed for reduction included those items: 1) added on by Congress in prior years which had not been requested by the Administration; 2) considered not to be a Federal responsibility and to be more appropriate for funding by the states and/or the industry sector deriving benefits, and; 3) viewed as relatively low priority within Administration budget ceiling limitation objectives.

QUESTION

The 1990 NOAA budget includes no funding at all for several critical programs, including Bering Sea groundfish and crab research, West Coast groundfish research, Pacific Salmon Treaty programs, PacFIN, marine mammal research, and domestic observers under the MMPA Amendments, and then adds money for these programs "for later transmittal" if the Administration's bill to establish additional marine fishing user fees is enacted. If NOAA believes that funding for these programs is needed, shouldn't they be included in the budget up front to get a realistic picture of NOAA budget needs? Isn't this particularly true in light of potential opposition to the user fee bill and the likelihood that it will not be enacted?

ANSWER:

Our shared dilemma is how to fulfill the intent of legislative and policy mandates within a level of Federal spending that must, at best, be constrained. Solving this dilemma will require creative thinking, and rethinking of how we can most cost-effectively protect, conserve, manage, and develop this Nation's living marine resources as well as consider ways in which we fund these efforts. In preparing the NOAA Fisheries budget proposal for FY 1990, we have again consulted with our constituents and undertaken extensive reevaluations of our programs. We defined the nature of the Federal program which is absolutely essential for the conservation and management of the Nation's renewable, but highly vulnerable, living marine resources in a way that ensures their continued productivity, availability, and related product safety. The results of our collective wisdom, as modified by necessary fiscal constraint, are reflected in the proposed NOAA Fisheries budget for FY 1990.

For several years the Administration has supported the establishment of marine fishing user fees to offset funding for important marine fisheries programs. Public reaction initially was negative, but recently there has been growing recognition of the need to provide revenue to supplement and stabilize funding for the Federal marine fisheries program. H.R. 5580, introduced, by Congressman Upton at the request of the Administration during the last session of Congress, as the "Exclusive Economic Zone Revenue Raising Act of 1988", would have generated approximately $67 million for Federal fisheries programs. This bill set the stage for serious deliberations on the fishing license proposal by the new Congress. Legislation has also been submitted by Congressman Young to address this issue.

QUESTION:

The Alaska, Oregon, and Washington North Pacific Fisheries Coalition has put together an analysis of several NMFS programs and how they fare in the NOAA budget that I find very persuasive. Please review the attached paper from the Coalition and respond to their funding requests for each of the seven programs that they identify.

ANSWER:

Bering Sea and Gulf of Alaska Groundfish and Crab Research: Increased enforcement monitoring by the Soviets and the U.S. in their respective EEZs have reduced the size of foreign fleets fishing in the Donut Hole with a resulting reduction in fishing pressure on U.S. stocks. Domestic management measures for these resources will rationalize domestic fishing. The proposed funding level for this activity from the marine fishing license fee revenues will permit stock definition studies to proceed at a reasonable pace.

Regional Fishery Management Councils: The major EEZ domestic fisheries requiring management are currently under Federal regulation. The role of the Council is shifting from FMP development to one of plan implementation, monitoring, and amendment. This change, along with increased efficiencies in administrative functions and regulatory processes, make the proposed funding feasible without impacting the number of FMPs currently in place. Further, the proposed allocation of marine fishing license fee revenues will maintain Council funding at current levels.

Domestic Observers: The $7.5 million requested under the Protected Species Management line item for implementation of Marine Mammal Protection Act (MMPA) amendments would provide for the required/recommended domestic observers. Support for this program would be provided through the proposed marine fishing user fees.

Enforcement and Surveillance: The recommended increase in fisheries enforcement and surveillance program efforts would be included among those items which would be supported by revenues from the proposed marine fishing user fees.

High Seas Salmon Interceptions: Negotiations have not yet been successful in securing the agreements permitting the placing of observers aboard the foreign high seas driftnet fleets which are necessary for collecting data to verify the extent of salmon interceptions. Authority for sanctions against the foreign nations involved in this high seas fishery, which are deemed appropriate relative to this interception problem, are available through the Pelly Amendment. Further, the Administration considers it appropriate for this program to be funded by the NW Pacific commercial fishing industry which benefits from the salmon harvest.

Pacific Fisheries Information Network: The PacFIN program has never received a specific Congressional appropriation and was initiated on a modest basis by contributions from the states, fisheries commissions, and the NMFS west coast statistics programs. The recommended increase in Fisheries Industry Information line item for Catch/effort data and PacFIN would be included among those items which would be supported by revenues from the proposed marine fishing user fees.

West Coast Groundfish Research: The recommended restoration of funding for west coast groundfish research is included in the Resource Information line item among those items which would be supported by revenues from the proposed marine fishing user fees.

QUESTION:

Please review the Sea Grant proposal "Coastal Change: The Sea Grant Response" and provide your assessment of the research program outlined.

ANSWER:

In the Sea Grant Proposal, "Coastal Change, the Sea Grant Response," the National Sea Grant Network proposes a program of strategic research, education/manpower development, and technology transfer/advisory services with a main focus on the water quality problems of our coastal oceans. Funding for this effort is not requested by the President. Given the current Gramm-Rudman-Hollings deficit targets, funding this program would divert funds from higher priority programs requested by NOAA.

QUESTION:

Is there any way to speed up NOAA's approval of annual grants and contracts to the states? I am told that NOAA approval is not forthcoming until as much as 11 months into the contract.

ANSWER:

NOAA's policy is to process the annual grants and contracts to the states as quickly as practicable. Over the past few years there, at times, have been extenuating circumstances such as proposed rescissions or proposed reprogrammings which have delayed the approval of the funding transfers.

QUESTION:

How can we fulfill our treaty obligation with Canada and Northwest Indian tribes if we do not fund Columbia River Hatcheries under the Mitchell Act?

ANSWER:

The Administration will propose legislation to transfer funding responsibilities for the operation of the Columbia River hatcheries to a non-Federal source, e.g. beneficiaries of the hydro-electric power and water diversion projects. These projects created the necessity for the hatcheries (which were also built with Federal funds), to mitigate for damage to the salmon runs in the Northwest which resulted from their construction.

QUESTION:

Secretary Mosbacher stated on March 14, before a House Appropriations Subcommittee, that he would keep "... the Nation's weather stations in service at current operating levels while a comprehensive program to Modernize and Restructure the National Weather Service is completed." Does this statement reflect current NOAA policy with respect to the National Weather Service consolidation?

ANSWER:

Yes. The Administration will keep current weather stations operating with no reduction in service levels through 1990. The comprehensive program to modernize and restructure the National Weather Service is described in the "Strategic Plan for the Modernization and Associated Restructuring of the National Weather Service" which was provided to Congress by the Secretary on March 17, 1989.

QUESTION:

I am particularly interested in the Stampede Pass weather station, where a federal contract for human weather observers has not been renewed. Even though the contract for the station expired on December 31, 1988, the State Aeronautics Commission continued the operations of the weather station through March 31. Tragically, within 1 week of its closing, a pilot was lost in the area due to what appears to be a weather-related accident. Yet, on a technicality, the National Weather Service refuses to admit that the station was in service these last few months. What plans are there to restore service to the Stampede Pass weather station in line with the Secretary's pledge?

ANSWER:

The National Weather Service is maintaining an Automatic Meteorological Observation Station at Stampede Pass. We do not plan to contract for human augmentation of this automatic observation system. Our offer to work with any organization or governmental agency willing to provide the personnel and funding for augmentation of the Stampede Pass observations still stands. The Secretary's statement regarding weather offices was addressed to the budgetary maintenance of full service weather offices. The Stampede Pass observatory had neither forecast or warning functions.

(Note: The only early April aircraft accident in the Stampede Pass area, that we have knowledge of, occurred in clear weather).

QUESTION:

Why was funding for the Colorado River Flood Warning System not specifically included in the FY 1990 budget?

ANSWER:

Over $4 million has been expended since 1984 to upgrade and modernize the flood warning system. The Colorado River Flood Warning System Project provides an unwarranted level of service to a very specific region. NOAA has already invested over $4 million to provide this unique, targeted service. It is appropriate for the beneficiaries of the improvements to fund the ongoing maintenance of the system.

QUESTION:

Legislation enacted last year required the creation of a new national marine sanctuary off Washington's North Coast in 1990 and called for a study of Washington's San Juan Islands for possible sanctuary status. Both the North Coast designation and the San Juan study will be carried out by the Office of Ocean and Coastal Resource Management, which must also designate four other sanctuaries in 1990. Given the amount of work and the very short time frame in which it has to be done, is the $2,000,000 provided in the 1990 budget for the OOCRM sanctuary work enough?

ANSWER:

Yes.

ANALYSIS FROM THE ALASKA, OREGON, AND WASHINGTON
NORTH PACIFIC FISHERIES COALITION

SEVEN CRITICAL FISHERIES FUNDING NEEDS FOR FY 1990

Critical Activities	1989 Currently Available	1990 Administration Request	1990 Needs Total	1990 Additions Requested
Bering Sea and Gulf of Alaska Groundfish and Crab Research	$ 1.0 million	$ 0	$ 4.1 million	$ 4.1 million
Regional Fishery Management Councils	$ 7.23 million	$ 3.47 million	$ 8.7 million	$ 5.23 million
Domestic Observers	$ 130,000	$ 0	$ 7.5 million	$ 7.5 million
Enforcement and Surveillance	$ 7.23 million	$ 7.37 million	$ 9.37 million	$ 2.0 million
High Seas Salmon Interceptions	$ 140,000	$ 0	$ 170,000	$ 170,000
Pacific Fisheries Information Network	$ 700,000	$ 0	$ 3.0 million	$ 3.0 million
West Coast Groundfish Research	$ 940,000	$ 0	$ 1.45 million	$ 1.45 million
TOTAL SEVEN CRITICAL NEEDS	$ 17.37 million	$ 10.84 million	$ 34.29 million	$ 23.45 million

These seven add-ons are $16.92 million over funds currently available for 1989 and $23.45 million over the FY 1990 Administration request.

BERING SEA AND GULF OF ALASKA GROUNDFISH AND CRAB RESEARCH
($4.1 million is needed but the Administration has requested nothing!)

Biological information on the health and abundance of the fisheries resource is critical for sound management. Data on stock structure, life history, population dynamics, ecosystem interactions all are crucial to the mosaic of information needed to truly understand the effects of fishing and to make competent management decisions.

Two million dollars is needed for research on the pollock stocks being hit extremely hard by the uncontrolled foreign fishery of more than one hundred vessels outside 200 miles in the Donut Hole of the central Bering Sea. *Over 1.3 million metric tons of pollock have been taken in that uncontrolled, unmonitored fishery alone — equivalent to the U.S. pollock fishery inside 200 miles!* What are the impacts on our stocks, on our markets, on the future of U.S. industry?

We gain the upper hand in negotiations if we have vital resource information.

Answers are needed now! Resource surveys will provide the background for sensitive negotiations with the Soviets, Japan, China, Poland and Korea on controlling that fishery.

The resources cannot be properly managed without stock assessment information. The other $2.1 million will be used for charter and research surveys to replace foreign cooperative research. It will support triennial groundfish and crab surveys, acoustic and midwater trawl assessments, bycatch surveys, crab surveys in the US-USSR transboundary area of the Bering Sea, Eastern Gulf of Alaska groundfish surveys, particularly for sablefish, and Western and Central Gulf of Alaska pollock surveys.

REGIONAL FISHERY MANAGEMENT COUNCILS
($8.7 million is needed; the Administration has requested only $3.47 million)

The Regional Fishery Management Councils have proven their worth since being established by the Magnuson Act to carry out the stewardship of the nation's marine resources. Any doubts whether the Councils would toe the mark in conserving and managing the fisheries wealth of the nation have been dispelled as they have grappled with more and more difficult and contentious issues such as bycatch, allocations among domestic fishermen, expanding fishing power, and competition for fishing grounds.

The work loads have increased tremendously as the fisheries have developed: more information to be analyzed, more meetings, public hearings, and workshops! Critical long-range planning to develop sound management systems for the fisheries! The need for more and better data collection.

The Pacific and North Pacific Fishery Management Councils now have increased responsibilities and commitments to resolve all the problems that go hand-in-hand with an ever-expanding, dynamic U.S. fishery.

Full funding for the Councils is needed to carry out their responsibilities. The fishing industry itself spends its hard earned money to participate in the Council process. This money is wasted if the process itself cannot function due to lack of funds.

DOMESTIC OBSERVER PROGRAM

($7.5 million is urgently needed; the Administration requested nothing!)

Data sources from the mandatory observer program on the foreign fleets are quickly drying up. Foreign joint ventures with observers in the Bering Sea ended in early March, leaving the fishery for the rest of 1989 as a totally domestic effort with very little data coming in from the fishing grounds.

The Councils need observer data to manage the fisheries! In January the North Pacific Council declared that the lack of observer data was preventing the Council from meeting its obligations under the Magnuson Act. The Council petitioned the Secretary of Commerce to prepare and implement an observer program and provide the necessary funding.

Data gathering is one of our most critical issues.

There is no way around the problem — either the data are made available or managers make uninformed decisions that may jeopardize the resource or become very conservative and establish regulatory schemes that cost the industry efficiency and their competitiveness on the world market. There can be no elegant solutions to problems such as bycatch if the Councils do not have the information with which to manage.

Recent amendments to the Marine Mammal Protection Act mandate observers on commercial fishing vessels. The agreement between the commercial fishing industry, the environmental community, and the administration contemplated sufficient funding to satisfy that mandate. Congress concurred in that agreement and understood that without additional funding observers will not be available and needed mammal and fishery data will not be collected. $7.5 million is the minimum needed to facilitate a nation-wide living marine resource observer program and constitutes a new add-on funding requirement. This observer program is of high priority for the collection of vital fisheries information and at least half of this amount may be needed in the Bering Sea and the Gulf of Alaska.

ENFORCEMENT AND SURVEILLANCE

($9.37 million is needed; the Administration requested $2 million less)

What is the merit in having the soundest management regime and well crafted regulations if no one is there to enforce them? Enforcement and surveillance are critical to the well being of the industry and the resource. They ensure fair play and also deter foreign fishermen from attempting to fish illegally within the U.S. 200-mile limit. It took a privately chartered aircraft to find the seven Japanese trawlers raiding our Zone last January. We need to beef up enforcement.

The additional $2 million will buy more NOAA Fisheries enforcement agents who contribute to the welfare of America's vast fishery resources by investigating violations of the Magnuson Act, the Marine Mammal Protection Act, and all other federal statutes that govern our fisheries.

Without adequate enforcement, all management efforts and international agreements designed to conserve marine resources are exercises in futility!

These agents provide on-the-grounds monitoring of catches, species data, biological information, and bycatches. They are heavily relied upon by the U.S. Coast Guard to provide continuity in training for their crews so that they can carry out their enforcement mission.

HIGH SEAS SALMON INTERCEPTIONS

($170,000 is needed but the Administration has requested nothing!)

The high seas interception of North American salmon by driftnet fleets from Taiwan, Korea and Japan is perhaps the most explosive issue now facing North Pacific fisheries. And yet the Administration has not seen fit to earmark any extra funds for collecting data on the impacts of these pirate fisheries.

Fishermen up and down the Pacific Coast have voiced great concern over these interceptions, especially with returning salmon runs being so poor last year. Their outcries have received national press coverage and the attention of environmentalists, all deploring the continued use of miles long driftnets that indiscriminately catch and kill everything from marine mammals, to fish, to birds, often breaking loose but continuing to ghost fish. They also can foul props and be a hazard to navigation.

The North Pacific Council is seeking to amend the Magnuson Act to strengthen their ability to stop the high seas interceptions. They are urging the Departments of Commerce and State to take immediate action to control the foreign fleets that are capturing salmon returning to North American streams.

The United States urgently needs to find a solution to the high seas interception problem.

The $170,000 will support studies on the origin of the salmon in high seas catches which will in turn help to structure the settlement of this grievous problem.

PACIFIC FISHERY INFORMATION NETWORK (PACFIN)

($3 million is needed; the Administration requested nothing!)

Another information problem! *There can be no really effective management without adequate, timely information.* PacFIN provides such information — not only for managers, but for industry to track the catches in statistical areas and better plan their operations.

PacFIN is the first regional data network — drawing together data streaming in from the fisheries off Alaska, Washington, Oregon, and California, into a central data base accessible to all.

It was no easy task building this unique data acquisition, management, and reporting system. Many years of hard effort went into it on the basis that it would help the Councils and in turn NOAA Fisheries and the States to better manage their fisheries. The Pacific States alone have contributed over $25 million in data collection and processing for this multi-agency, cooperative effort which includes the Pacific States and Islands and NOAA.

NOAA has patchworked funding for this program at inadequate levels in the past. *It is now time to step up to the plate to support this regional data base so critical for managing the fisheries under Council and NOAA Fisheries jurisdiction.*

WEST COAST GROUNDFISH RESEARCH

($1.45 million is needed; the Administration has requested nothing!)

The largest fishery on the West Coast off California, Oregon, and Washington is the rockfish and whiting fishery. A large industry depends on these stocks. The fishing effort could increase dramatically if trawlers, closed out of the joint venture fisheries off Alaska, head south for additional opportunities.

To maintain these groundfish stocks, funds are needed for the Tiburon Laboratory and NOAA Fisheries Northwest and Alaska Fisheries Center for:

- — continued research and surveys on rockfish and whiting
- — annual estimates of stock abundance and recruitment
- — assessment of the sablefish resource
- — assessment of the Dover sole resource

These valuable resources are managed by the Pacific Fishery Management Council.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

OCEAN POLLUTION

QUESTION:

NOAA is proposing to increase its coastal pollution programs by $12.4 million.

How will NOAA use these increased funds?

ANSWER:

For FY 1990, NOAA's Coastal Ocean Program will emphasize:
(1) expansion of the National Status and Trends Program ($2.0 million) to encompass new sites, measurements, and organisms; to evaluate historical pollution trends, including nutrient overenrichment; to assess pollutant levels in edible tissue; and to determine biological responses to pollutants in several major estuaries; (2) assessment of sea-grass and tidal-wetland estuarine habitats ($4.0 million) to determine the effects of nutrient overenrichment, diversion of freshwater flows, wetland habitat loss and lateration, and chemical contamination as a basis for the President's "no wetland loss" policy;
(3) determination of the impacts of society's nutrient enrichment of coastal waters ($3.0 million) and its effects on primary production and water quality; (4) expansion of NOAA's CoastWatch project ($1.5 million) along the eastern seaboard to include remote sensing to improve spatial and temporal resolution of spring algal blooms thought to be linked to oxygen depletion, particularly in the Chesapeake Bay; and
(5) improvement of NOAA's ability to deliver coastal ocean data and information in a timely manner ($2.5 million) through enhancement of its geographic information system, satellite imagery, and modeling capabilities to examine correlations among contaminant loadings, ambient pollutant concentrations, distribution of living resources, and habitat/land use patterns.

QUESTION:

Why is NOAA proposing, at the same time, to decrease ocean assessment activities by $1 million?

ANSWER:

While the Coastal Ocean Program is national in scope, the $1 million ocean assessment activity decrease has supported circulation modeling and measurements specific to Long Island Sound only.

QUESTION:

What conclusions has NOAA reached as a result of the information gathered under the Status and Trends Program concerning coastal pollution?

ANSWER:

NOAA scientists have concluded that contamination in the coastal and estuarine environments in the United States is almost always at its highest levels in urban areas near Boston, New York City, San Diego, Los Angeles, and Seattle. The fact that these are also areas in which bottom-feeding fish are found with tumors or fin-rot or damaged reproductive capacity implies that high levels of contamination are affecting marine organisms. By comparison with these urban areas, most of the United States coast is relatively uncontaminated. The major question is whether, in the latter relatively uncontaminated areas, the low levels of contaminants are nevertheless exerting an adverse biological effect.

Hints of decreasing trends in contamination appear in the first three years of data from analysis of mussel and oyster tissue from the National Status and Trends Program. The fourth year of samples are now being collected and may confirm some of these indications.

Section 203 of the Marine Plastic Pollution Research and Control Act of 1987 required NOAA to submit a report by September 30, 1988 on the effects of plastic on the marine environment.

QUESTION:

What is the status of this report?

ANSWER:

The report is currently under going final review by the Administration and will be submitted to Congress shortly. In addition, a copy will be forwarded directly to the Committee.

QUESTION:

What is NOAA proposing to do on the problem of plastic pollution in the oceans in FY 1990 and how much will NOAA spend?

ANSWER:

NOAA will continue to address the isssue of plastic pollution in conjunction with the activities of other Federal agencies including the EPA and Coast Guard. $750,000 is requested for plastic pollution effects in 1990 as part of the proposal for later transmittal.

This act also required NOAA to initiate plastic pollution outreach and citizen pollution patrol programs by April 1, 1988.

QUESTION:

Please describe NOAA's program and associated funding levels for complying with these requirements.

ANSWER:

As part of NOAA's proposed $500,000 program for 1990 for marine debris/gear entanglement, NOAA has contracted with the Center for Marine Conservation along with EPA and the Coast Guard to support a Nation-wide beach clean-up program. NOAA's share for beach clean-up, data collection and analysis is $30,000 in FY 1989. EPA's Region II is also conducting aerial surveys of the New Jersey and New York coast.

In addition, in FY 1988 and FY 1989 NOAA has contracted with the Center for Marine Conservation to operate three public information centers, on the Pacific coast, East coast and the Gulf of Mexico. These centers provide educational materials to the public regarding marine debris/plastic pollution. To operate the three centers and provide supplies and materials NOAA is spending approximately $123,000 in FY 1989.

QUESTION:

Last year, Congress provided $100,000 to the NOAA Sandy Hook Laboratory to conduct monitoring at the 106-Mile Dumpsite.

How has NOAA used these funds?

ANSWER:

These funds were authorized, but never appropriated. Nevertheless, NOAA Fisheries routinely examines fish caught during stock assessment surveys for diseases as well as for abundance and distribution.

NOAA has studied the problem of shell disease in crabs and lobsters in the New York Bight and has found that shell disease is a natural phenomenon in crustaceans, that it seems to have increased incidence in polluted waters, but that there is no conclusive evidence to associate shell disease in the Mid-Atlantic Bight with sludge disposal at the 106-Mile Site.

NOAA has been assisting EPA with the New York Bight Restoration Study associated with the 12-Mile Site.

NOAA, EPA, and the U.S. Coast Guard convened a workshop on ocean disposal of sewage sludge at the 106-Mile Site. The findings of the workshop will be used with other information to develop a unified monitoring, research, and surveillance strategy for the 106-Mile Site. Part of the strategy includes a public awareness effort to describe to the public what is known about the effects of dumping on the environment, living marine resources, and human health.

QUESTION:

What conclusions has NOAA reached concerning sludge dumping at the 106-Mile Site?

ANSWER:

NOAA's findings on sludge dumping at the 106-Mile Site are based on preliminary research, prior to 1983. From these and other existing studies, we can say that:

- The Site is highly dispersive, but it is unlikely that sludge would move up onto the shelf or onto beaches.
- There are no apparent linkages between fish and shellfish diseases and the dumping of sewage sludge at the 106-Mile Site.
- There is no information to suggest that seafood from the Mid-Atlantic Bight is unsafe to eat because of dumping at the 106-Mile Site.

QUESTION:

What is NOAA's proposed program for 1990?

ANSWER:

NOAA is to receive $5 per dry-weight ton of sewage sludge dumped at the 106-Mile Site in the Middle Atlantic Bight. Using Environmental Protection Agency (EPA) projections of the amount of sewage sludge to be dumped there, NOAA could receive as much as $1.58 million in FY 1990, and a considerably smaller amount in FY 1991. (Under the Ocean Dumping Ban Act, sewage sludge dumping at the Site is scheduled to cease December 31, 1991). NOAA will use these funds to conduct monitoring and research at the site and in the surrounding area. The monitoring and research will be specified in an overall strategy and an in-depth plan which is being prepared cooperatively by NOAA, EPA, and the Coast Guard (CG). Input for the strategy and plan was solicited from a joint NOAA/EPA/CG workshop held the end of March 1989. Workshop attendees included representatives from Federal and state agencies, the scientific and technical community, citizen groups, Congressional staff, and the nine sewage authorities currently dumping at the site.

QUESTION:

Under the Ocean Dumping Ban Act, NOAA will receive funds from sludge dumpers to carry out its responsibilities under the Act.

What funding does NOAA expect to receive and what does NOAA plan to do with these funds?

ANSWER:

NOAA is to receive $5 per dry-weight ton of sewage sludge dumped at the 106-Mile Site in the Middle Atlantic Bight. Using

Environmental Protection Agency (EPA) projections of the amount of sewage sludge to be dumped there, NOAA could receive as much as $1.58 million in FY 1990, and a considerably smaller amount in FY 1991. (Under the Ocean Dumping Ban Act, sewage sludge dumping at the Site is scheduled to cease December 31, 1991). NOAA will use these funds to conduct monitoring and research at the site and in the surrounding area. The monitoring and research will be specified in an overall strategy and an in-depth plan which is being prepared cooperatively by NOAA, EPA, and the Coast Guard (CG). Input for the strategy and plan was solicited from a joint NOAA/EPA/CG workshop held the end of March 1989. Workshop attendees included representatives from Federal and state agencies, the scientific and technical community, citizen groups, Congressional staff, and the nine sewage authorities currently dumping at the site.

QUESTION:

On March 31, 1989, the EPA Inspector General issued a report which was critical of EPA's monitoring program at the 106-Mile Dumpsite.

Does NOAA agree with the Inspector General's conclusions?

ANSWER:

NOAA is not in a position to evaluate EPA's operations.

QUESTION:

NOAA acts as the Scientific Support Coordinator for the recent Valdez oil spill.

Does NOAA have adequate funding to undertake its spill response and natural resource damage assessment responsibilities?

ANSWER:

The oil spill response activities of NOAA and other responders will be reimbursed from the Clean Water Act 311(k) fund administered by the USCG. NOAA, as one of the natural resource trustees, will receive funding from the $15 million advanced by EXXON to meet costs associated with assessing damages from the grounding of the EXXON VALDEZ.

QUESTION:

What exactly is the NOAA role in the cleanup effort?

ANSWER:

NOAA's Hazardous Materials Response Branch (HMRB) maintains a team of nine highly-trained Scientific Support Coordinators (SSC) located in Coast Guard Districts around the country to provide rapid assistance to Federal On-Scene Coordinators (OSCs) responding to accidental spills of oil or hazardous materials. The SSCs are supported by an interdisciplinary group of about 25 NOAA and contractor chemists, ecologists, and oceanographers that use a nationwide communications network to provide timely expert advice to Federal responders. HMRB supports Federal OSCs by providing: (1) microcomputer-based trajectory models that map the predicted movement of pollutants in both the atmosphere and the marine environment; (2) identification of sensitive environments and resources and recommended protective measures; and (3) automated data management to speed the flow of accurate and timely information to all responders.

In addition to providing vessel and aircraft support off Prince William Sound, NOAA compiles observations from aircraft overflights that are conducted in the spill region by aircraft from NOAA, USCG, EXXON, Alaska Department of Environmental Conservation (DEC), and others. Observers aboard each flight record abundance, distribution, and character of spilled oil and its weathered products on the sea surface and along shorelines. Additional observations include sitings of marine birds and mammals. Observations from each flight are plotted and printed daily on base maps and distributed to response personnel and others.

NOAA spill response activities began on the first day of the spill (March 24, 1989), with the Alaska Region SSC from Anchorage arriving in Valdez to support the Federal OSC and assist State and local response efforts.

QUESTION:

What is NOAA doing in its role as trustee for natural resources?

ANSWER:

NOAA acts on behalf of the Secretary of Commerce as a Federal trustee for natural resources under the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act. On Thursday, April 13, a memorandum of agreement was concluded among the four co-trustees for natural resources (the Secretary of the Interior, the Secretary of Agriculture, and the Undersecretary of Commerce for Oceans and Atmosphere, and the Commissioner of Fish and Game of the State of Alaska) and the President of Exxon Shipping Co. The agreement provides a down payment of $15 million from Exxon to be allocated among the co-trustees for work related to a damage assessment of injuries to natural resources and a determination of the economic values of those injuries. The eventual cost of the scientific activities and economic analysis required to complete the assessment may be several times the initial $15 million and will be spent over the next 4-5 years. Exxon has provided $2 million to each of the four co-trustees to begin work immediately.

The pre-damage assessment surveys are already underway to determine what will be necessary to restore or replace the fisheries and other natural resources that have been injured or lost as a result of the spill. Federal regulations to identify the best available procedures for estimating economic losses associated with injury to natural resources were issued by the Department of the Interior in 1986 and 1987 (43 CFR Part 11). They outline the scientific methods to be used to determine the pathway through which the pollutants reach the resources of concern, the adverse effects (injury) of those pollutants on the resources, and the extent of the injuries (quantification of injuries).

Under these Federal regulations, the economic losses resulting from injuries to the natural resources must be based either on the reduction in the value of services provided society by the resources in comparison to the services they provided before the spill (lost-use value), or on the cost of restoring the resources to their pre-spill condition (replacement costs). Trustees must base their claim on the lesser of these two values.

NOAA and the other trustees reached an agreement (April 12, 1989) outlining the activities of the trustees in the overall assessment of damages for injuries to the natural resources.

RIGHT WHALE RESEARCH

QUESTION:

What is the status of NOAA's Atlantic coast right whale research program?

ANSWER:

A right whale research program was initiated in 1987. Today, research is conducted by several institutions, primarily through a cooperative agreement with the University of Rhode Island. This research has supported studies on the distribution of whales, and on calving grounds off the southeast coast feeding grounds north and south of Cape Cod, and in the northern Gulf of Maine, including the Bay of Fundy. Individual whales have been identified and sighting surveys and food availability surveys have been conducted.

QUESTION:

What has NOAA learned about right whales from this program?

ANSWER:

Research data are being used to estimate calving rates and mortality rates, especially of young whales, as well as to determine habitat requirements. Clear conclusions about rates of population recovery will emerge from this program over the next few years.

QUESTION:

Why is NOAA proposing to eliminate this program?

ANSWER:

Funding for this effort has been included in NOAA's budget for four years. The intended purpose has been met. Further research is not of high priority.

QUESTION:

What is the population of the Atlantic right whale stock?

ANSWER:

Approximately 300 right whales have been identified using data collected over the last decade. The present research program has organized all sighting data collected to date, allowing cross validation of sighting records among researchers. Statistical methods are being modified and applied to estimate total number of right whales.

QUESTION:

Does NOAA have any other programs which specifically address Atlantic right whales?

ANSWER:

No.

SANDY HOOK NATIONAL MARINE FISHERIES LAB

QUESTION:

What is the status of efforts to restore the Lab?

ANSWER:

Design plans for development of the new laboratory building and renovation of the existing building has been completed and was presented on April 27, 1989, in New York to NOAA, the National Park Service, and the state of New Jersey. There was a two week review period to check for compliance with program requirements, park service restrictions and cost. If there are no substantial problems, construction on the new laboratory building should start by mid-December.

The justification for other than full and open competition is in NOAA's Office of Administration for final signature. Once approved, lease negotiations with New Jersey will be initiated. Additional funding to cover costs of both renovation and new construction is being sought by New Jersey from the Port Authority. This has apparently been resolved and should keep the costs to NOAA close to those originally estimated when the State's proposal was accepted.

QUESTION:

Will proposed budget cuts affect monitoring, research and habitat conservation operations at the Sandy Hook facility?

ANSWER:

Former President Reagan's 1990 Budget would have reduced research operations at Sandy Hook by eliminating selected low priority programs. President Bush has included the Sandy Hook budget into the category to be negotiated with Congress.

MARINE FISHING LICENSE FEE

NOAA is proposing the imposition of a Federal licensing fee for commercial and recreational saltwater fishing and levy on the sale of fish.

QUESTION:

How does NOAA's current proposal for a licensing fee and levy for marine fishing differ from that of previous years?

ANSWER:

The current version of the marine license bill (The Exclusive Economic Zone Revenue Raising Act of 1988) was introduced as H.R. 5580 in the last session of Congress. Revenues would come from a conservation fee and an ad valorem fee. A $20 marine fishery conservation fee would be paid by each person aboard a fishing vessel in the exclusive economic zone who has attained the age of sixteen years but not sixty-five years. An ad valorem fee of 1.75% of the ex-vessel value would be paid by the owner or operator of any fishing vessel with respect to the first sale for commercial purposes. The ad valorem fee applies to all species of fish that are managed by the Secretary of Commerce under the Magnuson Act or other legislation.

Previous versions of the marine license bill were similar to H.R. 5580. Originally, the bill applied to fishing in all marine waters off the U.S. coast — tidal, state (0-3 nautical miles), and the EEZ (3-200 nautical miles). States were viewed as equal partners in the marine license program and, therefore, would receive half of the net revenues. The other half would go into a special account in the U.S. Treasury where the funds could only be used for marine fishery programs. The original bill also contained provisions for a buyer and seller stamp or license, and a gamefish stamp for those Fisheries Management Plan (FMP) fisheries permitting only sport fishing activities. NOAA Fisheries estimated the bill would generate approximately $100 million to $120 million.

QUESTION:

Has NOAA conducted a review of the economic impact of its proposal on the commercial and recreational fishing industry?

ANSWER:

NOAA Fisheries has done some preliminary work to assess the economic impact of the bill on different sectors of the fishing industry. The ad valorem fee will be shared partially by harvesters, processors, and consumers. In general, the price of fish at the retail level would rise by less than a penny a pound.

NOAA Fisheries has reviewed the annual fees for state fishing licenses. In 1987, the average license fee was $10 for state residents. The non-resident fee averaged $24. Thus, the marine license fee in the proposed bill is consistent with fees charged by the states.

In 1985, the U.S. saltwater anglers spent an average of $528 on recreational fishing activities. Accordingly, the proposed marine conservation fee would increase their expenditures by less than four percent.

QUESTION:

Has NOAA studied the effect of the proposed levy on the price consumers pay for fish?

ANSWER:

NOAA Fisheries has done some preliminary work to assess the economic impact of the bill on different sectors of the fishing industry. The ad valorem fee will be shared partially by harvesters, processors, and consumers. In general, the price of fish at the retail level would rise by less than a penny a pound.

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SEA GRANT

QUESTION:

What is the status of the designation of the New Jersey Marine Sciences Consortium as a Sea Grant College?

ANSWER:

The Sea Grant National Review Panel recently approved the designation of the New Jersey Marine Sciences Consortium as a Sea Grant College and recommended forwarding the application to the Secretary of Commerce.

QUESTION:

What role will Sea Grant have in NOAA's Coastal Pollution and Global Warming initiatives?

ANSWER:

Since Sea Grant was proposed for termination under former President Reagan's Budget, no explicit role was included for Sea Grant in either the Coastal Ocean or Global Change Initiatives. President Bush did not specifically request funding for Sea Grant in his February 9 Budget Document, but left the program funding level to be determined through negotiations with Congress.

NATIONAL UNDERSEA RESEARCH PROGRAM

QUESTION:

What impact will the proposed budget cuts have on the Undersea Program at Fairleigh Dickinson University?

ANSWER:

The final NURP funding level will be determined through negotiations with Congress. Without NOAA funds, the AQUARIUS habitat program, operated by Fairleigh Dickinson University, would require other funding sources to maintain operations.

GLOBAL WARMING

QUESTION:

How will NOAA use the proposed increased funding for global warming?

ANSWER:

NOAA's Climate and Global Change Program is focused on the following objective:

> Providing reliable predictions of global climate change and associated regional implications on timescales ranging from a season to a century or more.

Like the National Program, NOAA's planned activities are designed to address three primary programmatic themes: MONITORING the Earth system; conducting FOCUSED STUDIES to understand the physical, chemical and biological processes that influence Earth system changes; and MODELLING AND PREDICTION. Specifically, FY 1990 resources will be focused on the following elements:

LONG-TERM OBSERVATIONS AND DATA MANAGEMENT

- o Operational Ocean Monitoring ($2.5M)
- o Global Sea Level ($3.0M)
- o Stratospheric Monitoring ($1.0M)
- o Climate Data Services ($4.0M)

MISSION-DIRECTED PROCESS STUDIES

- o Trace Gas Studies ($2.0M)
- o Interannual Climate/TOGA ($3.0M)
- o Global Hydrological Studies ($0.5M)

MODELLING AND PREDICTION

- o Climate Diagnostics ($3.0M)
- o Modelling and Prediction ($1.0M)

QUESTION:

Will any of this funding go to the Geophysical Fluid Dynamics Laboratory in Princeton, New Jersey?

ANSWER:

Scientists at NOAA's Geophysical Fluid Dynamics Laboratory are expected to be major participants in the Climate and Global Change Program. Specifically in FY 1990, we anticipate their involvement primarily in the Climate Diagnostics and Modelling and Prediction program elements. In addition, they will continue to be involved in the joint NOAA-NASA program for the Detection of Stratospheric Change. Since resources under the Climate and Global Change Program are allocated in response to specific project proposals from individual investigators or groups of investigators across NOAA and in the academic community, it is not possible at this time to provide detailed information on the total level of resources which may be allocated to scientists at GFDL or the activities to which they may ultimately contribute.

QUESTION:

What will the impact be if Congress fails to provide the proposed funding for computer enhancement at GFDL?

ANSWER:

Enhancement of the computer facilities at GFDL is essential to NOAA's Climate and Global Change and Weather Service modernization efforts and is critical to the success of weather, climate, and marine research in the 1990's. Failure to provide the upgrade would make it difficult for NOAA to meet the known demand for improved understanding of greenhouse warming, ozone change, and shorter-term climate variability.

State-of-the-art computer capabilities has increased by at least ten-fold in the eight-year period since installation of the current Class VI computer system at GFDL. With the present system, GFDL has made marked improvements in understanding and forecasting of the atmosphere and oceans. The proposed computer upgrade is essential if GFDL is to achieve further advances in these important areas of research. Work already planned requires the advanced computing capability and is expected to saturate the new Class VII system within a short time after installation.

Recently, Control Data Corporation (CDC) closed its supercomputer subsidiary (ETA Systems). Because of this, it is expected that support available for GFDL's present CDC CYBER 205 systems will degrade with time. Therefore, timely replacement of the present GFDL computers is even more important.

QUESTION:

A January 1989 Report of the NOAA Panel on Climate and Global Change called for NOAA to expand its global warming program. Is your proposed increase consistent with the recommendations in this Report?

ANSWER:

Yes, the FY 1990 proposal for NOAA's Climate and Global Change Program is consistent with the findings and recommendations of the independent NOAA Panel Report entitled THE U. S. GLOBAL CHANGE RESEARCH PROGRAM -- THE VISION: A REDEDICATION OF NOAA. In fact, the Report itself notes that:

> "A start has been made. NOAA is now building a program on Climate and Global Change to address these very needs in the context of an emerging interagency effort."

NOAA is committed to fulfilling its responsibilities in national and international global change efforts. The initial implementation of the Climate and Global Change Program in FY 1989 and 1990 is an important preliminary step in NOAA's long-term commitment to document, understand, predict, and provide information on global change in the natural environment.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

NATIONAL WEATHER SERVICE STATIONS

Last year, at my request, the Committee again included language in its report expressing its expectation that the National Weather Service personnel and programs in West Virginia would be maintained at no less than current levels. I followed up on this matter in a letter to you dated January 24, 1989. I am aware that in March of this year you directed that the Nation's operating weather stations remain in service at current operating levels through Fiscal Year 1990. A news release announcing your directive was issued on March 13, 1989 and I am inserting the full text in the record as follows:

> Secretary of Commerce Robert Mosbacher today directed that all of the Nation's operating weather stations remain in service at current operating levels while a comprehensive program to modernize and restructure the National Weather Service is completed. "It is not in the best interests of the Nation to close any weather stations until the modernization plan is operational." Mosbacher said, ending speculation over station closings in the immediate future.
>
> That speculation has been fueled by budget constraints. The Commerce Dpartment has never officially designated any of the weather stations for closing, although plans to modernize the service make some eventual closings inevitable, officials said.
>
> However, Mosbacher pointed out that in its 1990 budget, the National Oceanic and Atmospheric Administration (NOAA), parent of the National Weather Service, has included a request to finance the modernization and restructuring of the National Weather Service to provide improved forecasting and weather warning systems. The new system will include advance weather radar, observation automation, and a new communications system.
>
> Mosbacher, in making today's announcement, said that "closing any of the stations at this point might reduce service to the public, when we are, in fact, working to

improve that service. I intend to work closely with the Congress to insure maintenance of the quality and coverage of the National Weather Service."

QUESTION:

Please provide for the record a table showing the location, staffing, funding, and hours of operation of the Weather Service offices in West Virginia for fiscal years 1988 and 1989 as well as projected data for 1990. What is the situation with regard to subsequent budget years?

ANSWER:

Location	Current Staffing	Operating Level ($000's) 1988	1989	1990
WSO Beckley	6	$ 336	$336	$336
WSO Huntington	7	370	370	370
WSO Elkins	4	189	189	189
WSFO Charleston	20	1,324	1,324	1,324
WSO Parkersburg	...	...	...	...

Note: Hours of opertain in Beckley, Huntington, and Charleston were 24 hours daily while Elken operated 16 hours daily.

The above information applies to FY 1988, FY 1989, and FY 1990 with the exception of the operating level at each station. Personnel costs in FY 1989 and FY 1990 will increase by 3 percent and 2 percent, respectively, each year for the pay raise.

QUESTION:

It is my understanding that the Weather Station Office in Parkersburg, West Virginia, is a single function, one person operation and that the post is currently vacant. What steps are being taken to fill the vacancy and when do you expect to have the Parkersburg office in full operation?

ANSWER:

In light of the current staffing levels of full-service Weather Service offices and the approaching transition to a restructured NWS field service, it would make little sense, from the programmatic viewpoint, to restaff the Parkersburg Weather Service Office. The office has not had any responsibility for warnings, forecasts, or observations for at least 12 years. Our experience over this period is that leaving the Parkersburg weather office unstaffed has no effect upon the provision of timely warnings and forecasts to the Parkersburg area.

INTEGRATED FLOOD OBSERVING AND WARNING SYSTEM (IFLOWS)

On December 9, 1985, I secured an amendment to the FY 1986 Continuing Resolution which was designed to expand the IFLOWS flashflood warning program beyond the original 16 countries ravaged by the November, 1985 floods. This legislation was signed into public law by the President on Decemeber 19, 1985.

On December 20, 1985, I wrote to the Secretary of Commerce, urging that the IFLOWS program in West Virginia be implemented as quickly as possible. Secretary Baldrige responded on January 27, 1986, with a schedule for implementation which included a proposed transfer of funds to the participating States through cooperative agreements by the summer of 1986 so that the procurement and installation of equipment could be initiated.

On August 7, 1986, a federal grant in the amount of $1 million was awarded by the National Oceanic and Atmospheric Administration to the state of West Virginia to continue installation of the IFLOWS program.

On October 10, 1986, I contacted the appropriate state officials and strongly urged the timely execution of the federal grant of $1 million so that the IFLOWS system could be installed as quickly as possible and provide much needed advance warning to West Virginians living in flash-flood prone areas. In response, I was advised that the meeting between NOAA staff and the West Virginia State Department of Emergency Services would take place on November 24 and 25 of 1986.

The fiscal year 1987 Continuing Resolution included an amendment, at my request, which provided $650,000 to complete the IFLOWS project in West Virginia.

Last year, at my request, the committee again included language in the Committee report regarding the IFLOWS project expressing the expectation that NOAA accelerate the implementation of the IFLOWS project in West Virginia and surrounding States.

QUESTION:

Please provide, for the record, by county in West Virginia and year, a chronological history and an updated status of implementation of the IFLOWS project.

ANSWER:

Summary of IFLOWS Implementation

1. Pilot Counties

County	Installed # of Gages	Processor	Base Station	*Year
Logan	11	x	x	1981
McDowell	11	x	x	1981
Mingo	11	x	x	1981
Wyoming	8	x	x	1981

2. Expansion #1

County	Installed # of Gages	Processor	Base Station	*Year
Boone	4	x	x	1986
Cabell	2	x	x	1987
Fayette	3	x	x	1986
Greenbrier	6	x	x	1986

Jackson	2	x	x	1985
Kanawha	9	x	x	1986
Lincoln	3	x	x	1988
Mason	1	x	x	1988
Pocahontas	14	x	x	1986
Putnam	4	x	x	1984
Raleigh	3	x	x	1985
Wayne	2	x	x	1985

County	Installed # of Gages	Processor	Base Station	*Year
3. Expansion #2				
Barbour	5	x	x	1987
Berkeley	1	x	x	1988
Braxton	2	x	x	1987
Calhoun	0	x	x	-
Doddridge	3	x	x	1988
Gilmer	5	x	x	1987
Grant	1	x	x	1987
Hampshire	6	x	x	1987
Hardy	4	x	x	1987
Harrison	0	x	x	-
Jefferson	2	x	x	1989
Lewis	2	x	x	1989
Marion	3	x	-	1989
Marshall	4	x	x	1987
Mercer	0	x	x	-
Mineral	2	x	x	1988
Monongalia	4	x	x	1987
Monroe	0	x	x	-
Morgan	0	x	x	-
Nicholas	4	x	x	1987
Ohio	2	x	x	1987
Pendleton	7	x	x	1987
Preston	10	x	x	1987
Randolph	5	x	x	1987
Summers	3	x	x	1988
Taylor	0	x	-	-
Tucker	6	x	x	1988
Tyler	3	x	x	1988
Upshur	5	x	x	1987
Webster	5	x	x	1988

* Year county is able to receive precipitation information on a routine and timely basis.

QUESTION:

What needs to be done to implement and accelerate the program throughout the state?

ANSWER:

To accelerate the West Virginia portion of the IFLOWS program to cover the remaining nine counties in West Virginia, the State of West Virginia will need to purchase and install rain gauges, telecommunications equipment, and computers in the following nine counties:

Brooke
Clay
Hancock
Pleasant
Ritchie
Roane
Wetzell
Wirt
Wood

QUESTION:

What are the relative responsibilities of the Federal Government and state and localities regarding this program? Within existing Federal funds included in the President's budget, what more can be done to accelerate the implementation of this effort?

ANSWER:

The President's Budget request does not contemplate further installation of equipment. Responsibility for expanding and operating this program, which provides an unwarranted level of service to a specific, limited group, belongs with the State and localities.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

NATIONAL COASTAL MANAGEMENT PROGRAM

For eight straight budget cycles, the previous Administration attempted to reprogram, rescind, or terminate grant funding to states under the national coastal management program. Each and every time, this Subcommittee recommended, and the full Congress concurred, that the Administration's budget policy with respect to the funding of this program be rejected.

QUESTION:

Given the Administration's stated concerns about coastal and ocean pollution, can this subcommittee expect a different budget policy from this Administration with respect to the national coastal management program?

ANSWER:

This Administration is extremely interested in the current crisis in ocean and coastal pollution. The President and I both are on record as to the priority of these issues. As for the Department of Commerce, there are new funds requested for NOAA Coastal Ocean Initiative in the amount of $12,400,000.

QUESTION:

Is it your opinion that with 29 coastal states and territories participating in the national coastal management program, covering approximately 94 percent of the U.S. coast, that the objectives of the program have been met and do not require further federal funding assistance?

ANSWER:

The previous Administration argued that federal grants were no longer needed because the States have recognized the value of programs to protect the States coastal zone. Therefore, unlike when the program was initiated, a financial incentive is longer required to encourage states to act in their own self interest. President Bush did not include funding for this program in the initiatives which make up his February 9 budget plan. The funding level will be determined through negotiations with Congress.

QUESTION:

The FY 89 request for NOAA's ocean and coastal programs totaled $275 million. The Administration's FY 90 request is $196 million, a decrease of almost $80 million. Given the increase in coastal pollution and the attention that has been paid to this problem by the public, the media, and the President, how can you justify this kind of decrease?

ANSWER:

The decreases shown in former President Reagan's budget in ocean and coastal programs is mainly in those grant programs which should be funded by state, local or private sector interests, i.e. Coastal Zone and Sea Grant. There are actual increases in the coastal and oceans programs, i.e. $12,400,000 for Coastal Ocean Science, and $1,660,000 for Automated Nautical Charting System II. President Bush did not include these programs as specific initiatives in his February 9 budget plan, but has left their final funding level to be determined through negotiation with Congress.

QUESTION:

Given the trend in funding for NOAA at the Department of Commerce, is it your position that NOAA is properly housed with the Department of Commerce, or would it be more suited, given its mission and responsibilities, to be designated as an independent agency or part of another agency such as the Department of the Interior or the Environmental Protection Agency?

ANSWER:

I feel that any trend in funding has been driven by the need to address the budget deficit and concentrate funds on those areas of high national priority. NOAA's budget decision reflected general Administration policies and would have been the same, regardless of NOAA's organization location. As to the issue of where NOAA is housed, I strongly feel that it is properly located in the Department of Commerce, which gives it cabinet level representation in the Administration. NOAA should definitely not be a part of EPA. NOAA's scientific mission of providing unbiased information should remain clearly separate from EPA's regulatory and enforcement missions.

QUESTION:

Why has EPA, over recent years, been successful in convincing the Administration to support additional funds for coastal activities when NOAA, the agency with primary ocean responsibilities, has not?

ANSWER:

This Administration is extremely interested in the current crisis in ocean and coastal pollution. This Administration is on record as to the priority of these issues. As for the Department of Commerce, there are new funds requested for NOAA's Coastal Ocean Initiative in the amount of $12,400,000. Additional requested increases, i.e. global change, are also involved with ocean issues.

QUESTION:

The President's FY 90 budget contains a $12.4 million enhancement to add important new elements to NOAA's Coastal Ocean Program. Please provide this Subcommittee with further details about this enhancement and how this program will be coordinated with the national coastal management program and related EPA activities.

ANSWER:

NOAA's Coastal Ocean Program is designed to make effective environmental decisionmaking possible by supplementing current retrospective analyses with timely forecasts and prediction. The ability to predict environmental change will allow us to prevent problems and exploit opportunities through proactive regional approaches, rather than to only monitor and react to runaway problems. Providing decisionmakers with useful predictions of environmental change -- change caused naturally, as well as by society — is a challenge NOAA accepts.

NOAA is integrating and coordinating base programs to focus all of NOAA's talents and capabilities on reaching the goals set for the three program areas of its Coastal Ocean Program:

Prevention of Coastal Ocean Degradation and Pollution

Conservation and Management of Living Marine Resources

Protection of Life and Property in Coastal Areas

The FY 1990 enhancements fall into the four categories described below:

o We will expand the existing NS&T program to add sites, measurements, and organisms, including edible tissue; to evaluate historical pollution trends; and to determine biological responses to pollutants in areas such as Chesapeake Bay, Boston Harbor, Delaware Bay, the Hudson-Raritan Estuary, Long Island Sound, Tampa Bay, Galveston Bay, San Francisco Bay, and southern California.

- We will focus **research on sea grass and tidal-wetland estuarine habitats** to examine their ability to function normally and to support important marine life. Of special concern will be the effects of nutrient enrichment, diversion of freshwater flows, habitat wetland loss and alteration, and chemical contamination and development of models to predict cumulative impact.

  These activities and another FY 1990 program, using satellite data to repetitively map the Nation's tidal wetlands to determine their rates of change or disappearance, form a critical basis for tracking and enforcing the Bush Administration's "no net wetland loss" policy.

- We will explore the **effects of nutrient overenrichment** on the waters and organisms in the highly impacted Louisiana continental shelf region. The research will determine if nutrient enrichment has altered productivity, has influenced the low dissolved oxygen content, and contributed significantly to the global CO_2 cycle and climate change.

- We will expand our ability to synthesize data and deliver information to researchers and decisionmakers. This includes enhancement of NOAA's geographic information system, **GeoCoast**, to examine correlation among contaminant loadings, pollutant concentrations, distribution of living marine resources, and land use patterns. Demonstrations, conducted with coastal states, will encourage users to employ GeoCoast systems in their decisionmaking.

  A **CoastWatch** project for the Chesapeake Bay will be expanded to include remote sensing to increase spatial and temporal resolution of spring algal blooms thought to be linked to the Bay's oxygen depletion.

  Expansion of **NOAA's Interactive Marine and Forecast System (IMAFS)**, will increase our ability to access and combine rapidly changing observations with model output and archived data. Aspects of IMAFS database management will become operational, software enhancements will allow display of additional satellite imagery, and additional physical, chemical, and biological historical data sets will be added.

NOAA's coastal ocean program is coordinated with the national coastal management program and related EPA activities through existing management arrangements. For example, the NOAA Assistant Administrator for Ocean Services and Coastal Line Management is a member of NOAA's corporate board which is the body that has final approval over the activities of NOAA's coastal ocean program and is well positioned to ensure coordination with existing coastal management activities. Likewise NOAA has various MOV's and other working relationships with EPA to coordinate programs. In fact, EPA reviewed NOAA's coastal ocean program as it was being developed and provided comments. In addition, the Office of Management and Budget does cross-cutting reviews of programs to ensure that there is no overlap.

NATIONAL WEATHER SERVICE

The Administration has clearly indicated that one of NOAA's highest priorities is the modernization of the National Weather Service. As you know this will take much time and money. In the meantime, NOAA is obligated to maintain adequate weather forecasting capability throughout the United States.

Earlier this year, the State of Hawaii lost its weather satellite coverage with the deactivation of the GOES West satellite, which covered Hawaii and the Pacific islands. Although the GOES East satellite has been repositioned to the center of the United States, according to your agency, Hawaii and Alaska will be most severely hurt by the lack of adequate satellite weather imagery. In the interim, Hawaii must rely on other less sophisticated and comprehensive data collection means.

QUESTION:

Please explain how the Administration's proposal to terminate maintenance for Hawaii data buoys and consolidate the Pacific Region headquarters and the Alaska Region headquarters is consistent with NOAA's obligation to provide adequate weather forecasting capability.

ANSWER:

Elimination of the Hawaiian buoy network would save nearly $600,000 in recurring costs. The four buoys resulted from a Congressionally mandated add-on to the Department's appropriation. There is already in existence sufficient observational data from non-buoy sources, such as land stations, satellites, and aircraft and ship observations, to maintain a quality warning and forecast program for the central Pacific.

While weather data buoys are important for monitoring and predicting weather in mid and higher latitudes, they are far less useful in subtropical areas like the Hawaiian Islands where atmospheric dynamics are on a larger temporal and spatial scale. These buoys are very expensive to operate and maintain and contribute much less to the quality or timeliness of warnings than those elsewhere.

The Weather Service regional headquarters offices do not provide forecasts or other public services, but are responsible for providing administrative support to the Weather Service field offices. The Hawaii and Alaska regions operational staffs are comparatively small with a span of control that justifies only one regional office. An Administrative Support Office would remain in Honolulu to provide for the unique logistical needs of the region and to expedite administrative actions.

QUESTION:

How does NOAA plan to ensure adequate weather forecasting for Hawaii, Alaska and the Pacific if the launch of the next GOES satellite is not successful?

ANSWER:

GOES contingency plans have been formulated for several years and are in various stages of implementation. A number of actions have already been taken to ameliorate the potential loss of a GOES satellite capability. Equipment and technology to more fully use polar-orbiting satellite data are now in place in both Hawaii and Alaska. Arrangements have been made to acquire and use Department of Defense satellite data, and negotiations are underway to acquire more data from foreign satellites.

QUESTION:

As you know, the Air Force has proposed to terminate funding for hurricane reconnaissance in the near future. I understand that NOAA has ceased working a technical study to evaluate the benefits and costs of a possible transfer of hurricane and winter storms reconnaissance responsibilities and assets from the U.S. Air Force to NOAA because NOAA is no longer interested in such a transfer. If the Air Force is allowed to terminate this program, will the National Weather Service be without hurricane reconnaissance data?

ANSWER:

The NWS will not be completely without reconnaissance data but the capability will be severely reduced. NOAA's Office of Aircraft Operations operates two WP-3 aircraft that are used primarily for hurricane reconnaissance purposes during the hurricane season. These aircraft are called on at times to augment Air Force data by flying operational hurricane reconnaissance missions. These two planes would still be available for reconnaissance.

NATIONAL UNDERSEA RESEARCH PROGRAM

NOAA's National Undersea Research program is devoted to understanding the links between the biological, chemical, and physical processes in the oceans, as well as assessing resources in the U.S. Exclusive Economic Zone.

During his confirmation hearing, Secretary Mosbacher acknowledged that NURP contributes to a variety of NOAA missions including fisheries research and assessment, coastal processes, and natural and man-induced environmental changes. For example, research conducted by NURP is relevant to NOAA's global change mission which is one of NOAA's highest priorities.

Although NURP's research is relevant to other programs for which NOAA continues to request funding, the Administration continues to propose termination of NURP despite repeated efforts by Congress to restore funding . In fact, it appears to me that NURP plans for the future relying upon its expectation that Congress will continue to restore the program each year.

QUESTION:

How do you justify terminating NURP in light of its relevance to other NOAA programs, such as global change, for which the Administration supports funding?

ANSWER:

NURP is largely oriented to state and regional concerns. Accordingly, the previous Administration argued NURP should be funded from private and state resources or by other Federal agencies providing direct support for marine research and development. President Bush did not include these programs as specific initiatives in his February 9 budget plan, but has left their final funding level to be determined through negotiation with Congress.

SURVEYING AND MAPPING THE EXCLUSIVE ECONOMIC ZONE

The Administration's FY 90 budget request includes funds to continue surveying and mapping of the 200 mile Exclusive Economic Zone.

QUESTION:

What is the purpose, scope and methodology of this program? Which agencies are working with NOAA on this matter?

ANSWER:

The purpose of the National EEZ mapping and research program is to describe and understand the processes--geological, geochemical, and geophysical--which act at and within the seafloor of the EEZ. Information is needed to further understand the processes involved in the development of the seafloor and continental margins, as well as those related to the formation of nonliving marine resources on and within the sea floor. This program is in response to the Presidential proclamation of March 10, 1983, that the ocean area from a line 3 miles off the coast of the U.S. and its island territories out to 200 nautical miles is the "exclusive economic zone" of this Nation. This action gives the U.S. jurisdiction over the vast living and nonliving resources within those 2.9 billion acres. (Note that the total onshore area of the U.S. and its territories is only 2.3 billion acres). The characterization and evaluation of the seabed of the EEZ involves the following activities:

- Understanding the geological framework and processes;
- Identifying marine energy, mineral, and other nonliving resources;
- Understanding causes of seafloor geological hazards;
- Determining sedimentary basin evolution; and
- Defining geomorphic and sedimentologic processes.

The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Geological Survey (USGS) have established a major cooperative program to determine the characteristics and resources within the EEZ by utilizing modern survey techniques and analysis of existing data. The objective of the National Ocean Service Charting and Geodetic Services (C&GS) part of the program is to provide base maps essential for planning and carrying out resource exploration, exploitation, and management activities. Seafloor maps are used for mineral exploration, deployment of seafloor instrumentation, submersible operations, fishing operations, subsea pipeline or cable routing, geologic hazard assessments, marine geophysical research, surveys of ocean waste disposal sites, environmental impact applications, and seafloor habitat investigations.

A Joint Office for Mapping and Research (JOMAR) has been formed to coordinate these joint activities, avoid duplication of effort, assure adequate response to the needs of users, provide for timely delivery of products and services and exchange of data, and facilitate private sector involvement in the direction and use of EEZ-related data products. Federal agencies represented on JOMAR's Federal User Coordination Committee are as follows: Bureau of Mines, Department of Energy, Department of State, Environmental Protection Agency, Minerals Management Service, National Aeronautics and Space Administration, NOAA, National Science Foundation, Oceanographer of the Navy, U.S. Coast Guard, USGS, and the U.S. Army Corps of Engineers.

In carrying out its charter, JOMAR has just produced a 10-year national plan for EEZ mapping and research to guide the formation and monitoring of a National program. It was prepared in cooperation with a user community, that includes academia; industry; Federal, state, and local government agencies; and other organizations. National symposia and workshops are sponsored by JOMAR. In November 1987 the third biennial EEZ symposium was held at USGS headquarters in Reston, Virginia. NOAA held a workshop in 1984 that dealt with bathymetric mapping and geophysical surveying in the EEZ. The fourth biennial EEZ symposium is scheduled for November 1989. Recommendations from these meetings have been used to guide the development of the National program.

Bathymetric surveys have been conducted by NOAA for high priority areas using the SeaBeam and Bathymetric Swath Survey systems for West Coast, Alaska, Hawaii, and Gulf of Mexico EEZ areas. These surveys produce highly accurate seafloor depths and, when used in conjunction with high-precision navigation, produce very detailed bathymetric maps. The 10-year plan lists the areas where surveys are planned for the future. High resolution EEZ maps have been produced, but few people outside of the Federal government have had access to them due to their security classification. Data could not be released without approval of the Department of Defense. Recently, the Navy removed some these restrictions, thereby allowing NOAA to release selected maps and information to the EEZ user community. This action will greatly increase the availability and the demand for EEZ surveys, maps and related data.

QUESTION:

In addition to mapping, what is NOAA's involvement in the assessment and development of mineral and non-mineral resources in the EEZ?

ANSWER:

With respect to mineral resources, NOAA also conducts research into seafloor processes, near crustal spreading centers which bear on the formation and occurrence of polymetallic sulfides. NOAA's National Geophysical Data Center has established and is maintaining a marine minerals data base, to assure that federal agencies and other interested parties have access to current information. Also, the National Marine Fisheries Service (NMFS) has capabilities for helping to assess the potential effect of seabed mining activities on living resources.

NOAA also has experience in regulating minerals development beyond the outer continental shelf through its implementation of the Deep Seabed Hard Mineral Resources Act. In connection with this responsibility, NOAA has jointly supported, with the Department of the Interior's Minerals Management Service, research into potential environmental effects from seabed mining. Drawing on its seabed minerals experience, NOAA also has participated in joint federal-state task forces organized by the Department of the Interior to consider the implications of ocean mineral development within the U.S. EEZ.

With respect to non-mineral resources, NOAA's NMFS has primary responsibility within the U.S. EEZ. This responsibility is comprehensive in scope and pertains to the implementation of a variety of statutes including the Magnuson Fishery Conservation and Management Act, Marine Mammal Protection Act and Endangered Species Act.

QUESTION:

The 101st Congress will consider legislation to establish a new framework for the assessment and development of marine minerals. Legislation passed by the House Merchant Marine and Fisheries Committee during the 100th Congress designated NOAA as the lead agency. What do you feel is the appropriate role for NOAA in the assessment and development of marine minerals in the U.S. EEZ?

ANSWER:

We are unable to comment on potential legislation without a concrete proposal in hand that can be circulated among and reviewed by all relevant Federal agencies.

SUBCOMMITTEE RECESS

Senator **Hollings**.The subcommittee will recess until Tuesday, a week, May 2. We will have the SBA and the Legal Services Corporation. Senator Bumpers, do you want to referee that with Senator Rudman?

Senator **Rudman**. He is on my side.

Senator **Bumpers**. I am on both your sides.

Senator **Hollings**. I will send some TV down.

[Whereupon, at 10:46 a.m., Thursday, April 20, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, May 2.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

TUESDAY, MAY 2, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room S–146, the Capitol, Hon. Dale Bumpers presiding.

Present: Senators Bumpers, Rudman, Stevens, and Kasten.

LEGAL SERVICES CORPORATION

STATEMENT OF MICHAEL B. WALLACE, CHAIRMAN

ACCOMPANIED BY:

- TERRANCE J. WEAR, PRESIDENT
- THOMAS F. SMEGAL, BOARD MEMBER
- ROBERT D. RAVEN, PRESIDENT, AMERICAN BAR ASSOCIATION
- WILLIAM O. WHITEHURST, JR., FORMER PRESIDENT, AMERICAN BAR ASSOCIATION OF THE STATE OF TEXAS

OPENING REMARKS

Senator **BUMPERS**. I am going to go ahead and start the hearing. Senator Kasten on the minority side is here, and Senator Rudman will be here momentarily.

Today, we continue our fiscal 1990 hearings on programs under the jurisdiction of the subcommittee. We begin this morning with the Legal Services Corporation which has submitted its 1990 budget request of $295,314,000. That is a reduction of roughly $13 million, or 4.3 percent less than the amount appropriated last year.

It is interesting to note that the Corporation's proposed reduction will eliminate funding for the very programs Congress has gone on record as overwhelmingly supporting, State and national support centers, the National Clearinghouse for Legal Services, regional training centers and computer assisted legal research centers. In fact, over the past 4 years, amendments to eliminate funding for these essential components of our national legal services delivery system have been soundly defeated on the floor of the Senate.

Appearing on behalf of the Legal Services Corporation are its Chairman, Michael Wallace; its president, Terrance Wear; board member Thomas Smegal. Is that Smegal or Smegal?

Mr. **Smegal**. Smegal, yes, sir.

Senator **Bumpers**. Smegal? Also presenting testimony is Robert Raven, president of the American Bar Association and William O. Whitehurst, Jr., the former president of the State Bar of Texas.

Gentlemen, we have the Small Business Administration appearing immediately after you, and so we would appreciate it if you could summarize your statements. We also have back-to-back votes, Senator Rudman, at 11:30 and 11:45. I would hope that we could conclude by 11:44. [Laughter.]

First of all, do you have a statement, Senator Rudman?

Senator **Rudman**. No; I don't.

Senator **Bumpers**. Senator Kasten?

Senator **Kasten**. No, Mr. Chairman.

Senator **Bumpers**. Mr. Wallace, please proceed.

STATEMENT BY MICHAEL B. WALLACE

Mr. **Wallace**. Thank you, Mr. Chairman, I am Michael Wallace from Jackson, MS. I have been before this subcommittee twice before as a member of our Board of directors. This is my first, and I think we all hope, my last time here as chairman of the Board. [Laughter.]

I am here to convey LSC's request for an appropriation of $295,314,000 for fiscal year 1990. That request cannot be properly understood except in the context of our history of prior requests since 10 members of this Board took office in December 1984.

You have been told before and you will be told again today that the majority of this Board is attempting to destroy the Federal system of providing legal services to the poor.

You have not been told the truth. The truth is that every member of this Board supports the Federal provision of legal services to the poor, as 10 of us testified under oath before this body confirmed us. The truth is that we have been increasing the funds for the delivery of legal services to the poor in our 4½ years in office. The truth is that every regulation we have promulgated, with one partial exception, has been accepted by the Congress. The truth is that Congress has endorsed our and President Reagan's proposal to improve the efficiency of legal services by introducing competition, as required for other Federal contracts.

The truth is, contrary to Mr. Whitehurst's submission, we do not have antagonism and disdain for the organized Bar. The chairman and the ranking member of this subcommittee are familiar with my efforts to open communications with Congress after I became chairman in December.

I made similar overtures, to the bar, traveling to the ABA's committee meeting in February. The first 10 minutes I was in the room, my staff and I were accused of bad faith four times by four different people, and Mr. Whitehurst repeats said charge in the second paragraph of his testimony today.

It is a free country. They have a right to say whatever they want. Still, it is a little much, after they rejected my efforts of communication and reconciliation, to claim that I have disdain for them. The record is to the contrary.

Let's move to the record as it pertains to this budget request. This budget, as have prior budgets since 1986, focuses our resources on local day-to-day legal services to the eligible poor and provides the same amount of funds to basic field grantees as last year.

When we took office, the existing appropriations bill for fiscal year 1985 provided $265 million for direct delivery of legal services in the category of basic and supplemental field programs, native American programs and migrant programs.

AN INCREASE FOR DIRECT DELIVERY

Our first budget request in 1986 sought to increase the direct delivery total to $274 million. The budget I bring you today seeks $282 million for direct delivery. I do not contend that that increase of 9.4 percent over 4 years is exorbitant. It is not. But it is a lot better than many social programs have done during the era of the Gramm-Rudman-Hollings Act.

Moreover, the Board has worked to expand the poor's access to legal services through other resources. We have provided seed money and supported bar associations in the IOLTA Program, which 48 States now have, providing $30 million a year for services. Over the last 4 years, total funds available from non-LSC sources have increased from $81 to $124 million.

COMPETITION

Other initiatives have proven successful, including law school clinics and pro bono work. For years, our board members have argued that efficiency can be improved by permitting competitive bidding for grants.

There has been skepticism expressed about the system of competitive bidding, even though it is in the congressional appropriations act for this year. I share many of those same questions. It is hard to understand exactly how competition will work. For that reason, the Board's Committee on the Provision of Legal Services to the poor under the chairmanship of our newest member, Blakely Hall, will begin public hearings on the subject next month.

Our staff is now preparing a model which will be available for public comment before the hearings begin. I strongly encourage all those who are interested in the future of legal services for the poor to participate in those hearings and give the Board the benefit of their wisdom. This question is to be resolved by people with good will, and the question is: Who can best deliver the services needed by the poor in each locality?

CHANGES IN LSC REGULATIONS

As the former chairman of our Committee on Operations and Regulations, it gives me special satisfaction to note that with one partial exception, Congress has accepted each of the 10 sets of regulations we promulgated from 1984 through 1988.

The partial exception involves regulation of lobbying and other political activities. That is a regulation which we put through in compromise fashion, supported by all 11 members of the Board and which was accepted by the representatives of our field grantees. To the best of my knowledge, no Member of Congress has ever questioned the merits of this regulation.

The restrictions on our ability to enforce that regulation stems solely from doubts as to our Constitutional authority over private funds. I am glad to see in the fiscal year 1989 appropriations bill that those doubts have now apparently been resolved in the Corporation's favor. The new Board will be able to enforce the regulation in full.

I should note that Congress blocked the enforcement of one regulation which was never promulgated. In 1987, our Board began hearings on a proposed regulation to enforce the McCollum amendment governing the composition of governing boards of our grantees. Without waiting for our Board to hear testimony and to revise the proposed regulation and without debate in either House, the conference on the fiscal year 1988 continuing resolution blocked further regulation in this area, which Congress had an undoubted right to do.

I don't know what the problem is with it. No one in Congress has ever told me, but Congress has made plain in the fiscal year 1989 bill that they accept the idea in principle which has authorized our successors to put it into effect.

LSC REFORMS

As you have noted, Mr. Chairman, the only reform with which Congress has not agreed is our effort to eliminate direct funding for State and national support centers, which provide little if any direct delivery of legal services to the poor. We reiterate that request this year. They were established with the purpose of advancing the law reform agenda of the 1960's through lobbying and impact lawsuits. That is not my opinion; it is fact. You can look it up.

The law reform agenda, I think, is the primary source of continued public criticism for the program and it's the reason that this town's largest newspaper refers to legal services as Lyndon Johnson's secret weapon. We believe that it is time to eliminate that secret weapon and put all of our ammunition into direct delivery at the local level.

This year, we are asking Congress for other needed reforms. I won't go into them now, given the limited time available to me. They are detailed in our testimony. I do want to comment briefly on my concerns about the inefficiency and possible unconstitutionality of our present corporate structure, concerns which members of this subcommittee have indicated that they share, to some extent.

I do need to respond briefly to one comment Mr. Smegal has made about that. It is true that most corporations, as we do, have outside directors. What we do not have that they have is inside directors. We do not have a single member of the Board who is in the headquarters every day and knows what is going on. Consequently, we miss a lot.

When I first appeared before this subcommittee 2 years ago, the ranking member informed me that our staff was engaged in illegal political activity. I said then and I say now that I have no knowledge of the facts surrounding those circumstances. We instructed our former president, who is praised in today's testimony, to investigate, and he told us the ranking member was wrong.

I am skeptical of that conclusion. I explained my reasons to him and to the Board and to the ranking member at the time. But my point is that I don't know the facts and under the current system, neither I nor any of my other directors can know the facts.

The system should be changed so that the person or persons you confirm to run the Corporation are in the office to see what is going on.

Mr. Chairman and members of the committee, I appreciate your time in listening to this review of the budget over the last few years. I think we have a good proposal. I think we have come a long way, and I think we have built a successful foundation on which our successors will be able to win the war for the nonpolitical delivery, direct delivery of legal services to the poor to meet their basic human needs.

I thank the subcommittee for its time and attention.

Senator **BUMPERS**. Thank you, Mr. Wallace.

Mr. Wear?

STATEMENT BY TERRANCE J. WEAR

Mr. **WEAR**. Thank you, Mr. Chairman. My name is Terry Wear. I am the president of the Legal Services Corporation. I would ask, Mr. Chairman, that my prepared statement and the prepared statement of——

Senator **BUMPERS**. They will be entered into the record, Mr. Wear.

Mr. **WEAR**. All right. Thank you, Mr. Chairman.

Mr. Chairman, as you noted in your opening remarks, the appropriation request made by the Corporation for fiscal year 1990 is approximately $295 million. That represents an 18-percent increase over last year's request and a 4.3-percent decrease over what was appropriated last year.

LSC BUDGET JUSTIFICATION

The budget was put together with a great deal of thought and care, and that rationale for the budget is detailed in the budget submission, which you all have. The purpose of this budget is to focus our resources on the basic field programs. The amount of money going into the basic field programs has not been changed. The Corporation is requesting approximately $275 million for the basic field programs. That includes $1 million for what are called supplemental field programs and $9.7 million that was formerly a separate item for migrant funding. It is all in the basic field program and is all available for the direct delivery that Mr. Wallace mentioned.

In addition, the Corporation is requesting $1.1 million to fund its Law School Clinic Program. This is the same amount as last year. Presently, there are 26 law school clinic programs that compete competitively for these grants. The programs have generally done a good job. They are able to keep time, for example, as to how their resources are spent, and this pilot project that was begun by the

Corporation 3 years ago, I think, has borne fruit, and I think it is worth continuing.

As you also noted, Mr. Chairman, the proposal contains no funding for the national and State support centers, the regional training centers, and computer assisted legal research. I have had an opportunity to go back and review the history of this, much of it written by Mr. Alan Houseman, who was with the Corporation in the late 1970's, and, I think, the very beginning of 1980. He lays out very well, I think, the purpose of the national State support centers.

He indicates that they were created to push the so-called law reform agenda, the idea that the poor, as a class, would be better off if we made structural changes in our society, and one of the ways to go about these changes is through litigation and through lobbying.

There has been, as you know, a dispute over whether that is the way to go or whether direct delivery is the way to go in this Board, and I am charged with carrying out the approach of moving forward on direct delivery rather than on law reform. That is the reason for that approach to the budget.

My time is getting away from me. Let me jump ahead, if I may, and talk just a little bit about some of the proposed language we had at pages 33 and 34 of the budget request. That language is aimed at trying to deal with improving the Corporation's ability to enforce the law and to get Federal prosecutions for fraud and other abuses.

CRIMINAL ACTIVITY

We have situations within the programs where an executive director may put money into his pocket, money that was granted to the program for purposes of providing legal services. Sometimes you have abuses where expenses are charged to a program that were personal expenses and things of that nature.

When we go to the various U.S. attorney's offices or to the Justice Department and try to prosecute the cases, we generally run into three sets of problems. The statutes that are aimed at prosecuting this sort of fraud and that apply to other Federal grantmaking agencies are all couched in terms of Federal funds, Federal agency, or Federal employees, and because of the structure of the Corporation and some of the language that is in the act, there is considerable doubt as to whether those statutes apply.

Now, it is an arguable point and I would argue that, in fact, they do apply or should apply.

Senator BUMPERS. Mr. Wear, are you telling us that the executive director of a legal services program can put money in his pocket and nobody is going to do anything about it?

Mr. WEAR. Well, I have had situations where that has happened. The bottom line is——

Senator BUMPERS. Do they hold some kind of unique status that ordinary citizens don't?

Mr. WEAR. Well, I don't know that they hold any status, Senator. The problem is that the statutes that are normally used to prosecute that sort of activity arguably don't apply because these people aren't Federal employees or the money is not Federal funds.

Now, there are other legal theories, and we try to use the other legal theories when we can, such as mail fraud and things of that nature, but it is difficult to prosecute those situations.

I had a case where the Justice Department, I should say one of the U.S. attorney's offices in the State of New York, declined prosecution principally over the problem of whether or not the funds that were converted were Federal funds.

The way the statute is set up, the money comes to the Corporation. The Corporation then grants the funds. Because of the Corporation's status as an ostensibly private, nonprofit corporation, a good defense lawyer, and if I were the defense lawyer representing this defendant, I would argue that those really aren't Federal funds. They lost their Federal character when they went to the Corporation.

Senator BUMPERS. If the LSC brought an action with funds that were provided by the Federal Government on behalf of a plaintiff and then recovered a $10,000 judgment, which the lawyer who handled it for LSC then put in his pocket, that is not Federal money, even though it was procured with Federal money? Are you suggesting in a case like that he couldn't be prosecuted under Federal law?

Mr. WEAR. I think our—well, the problem would, again, boil down to whether or not the money that the grantee got from the Corporation is Federal funds. I would certainly argue that that money was derived from the money that the Corporation gave them, but the problem is that the Federal statutes, other than mail fraud, the False Claims Act, 18 U.S.C. 1001, which deals with false statements that were made by Federal officials or employees, arguably don't apply to these people.

A good defense lawyer can take those statutes and create an issue where you won't get a conviction or there won't be—either that they will argue against criminal intent that the statute wasn't clear and hence, the individual didn't have criminal intent to violate the statute or that the statute simply just doesn't apply.

Senator RUDMAN. Have you ever tried prosecution under a State law?

Mr. WEAR. I believe that we have referred one or two cases. The general problem, and it is the same problem in the securities area that you are familiar with, many State prosecutors feel that they have got a full plate as it is and they don't——

Senator RUDMAN. Is there a case where a State prosecutor has refused to prosecute?

Mr. WEAR. I will have to check, Senator. I don't know.

Senator RUDMAN. Will you check——

Mr. WEAR. Yes, sir.

Senator RUDMAN. Please furnish it to me, because I will tell you that if a legal services operative in the State of New Hampshire stole money or embezzled money, I can assure you that prosecuting him would be no problem in New Hampshire.

Senator BUMPERS. I am sorry to hear that. I was getting ready to apply for a job with legal services. [Laughter.]

Senator **Rudman**. State law makes no distinction, if funds are stolen as to whether they were Federal funds, State funds, or whatever funds. Now, if you are telling me that you have had prosecutions rejected, I would like to know about that. I would like to know what State and what prosecutor. Would you supply that for the record, please?

Mr. **Wear**. Yes, sir.

Senator **Rudman**. Fine.

Mr. **Wear**. As a matter of fact, I put together a whole series of cases for our testimony on the House side, and we will give you the same set.

Senator **Rudman**. I would like to see that.

[The information follows:]

LSC Grantees and Potential Criminal Conduct

Matters Referred to State and Local Authorities

1) An employee of Central Louisiana Legal Services embezzled $55,000 between 1982 and 1985. That program recovered about $27,000 of the $55,000 in 1985. Currently, the program is pursuing an action to recover the remaining funds. In addition, the employee served a prison sentence, was recently granted clemency and is currently on parole.

2) LSC learned during an on-site review that one or more of California Rural Legal Assistance's employees had misappropriated client trust and/or petty cash funds in 1987. Since that time, the individual(s) involved either have been terminated or have resigned. According to the program, restitution of about $7,000 has been made and several matters continue to be litigated by the district attorney.

3) LSC learned during a review of Charles Houston Bar Association's 1986 Board of Directors minutes that its "Executive Director was charged with one count of misdemeanor grand theft for altering the payees on several thousands dollars worth of checks during 1984. After an investigation by the District Attorney, she pleaded guilty and reimbursed Judicare approximately $6,000. More recently, a part-time clerk typist altered the payee on one of the panel attorneys' checks and cashed the check for approximately '$366.00.'"

Matters Referred to the United States Department of Justice:

1) LSC referred a matter regarding Heart of Texas Rural Legal Services to the Department of Justice (DOJ) in January, 1989. Specifically, LSC alleged that the former Executive Director used LSC funds to pursue a Master in Business Administration degree without approval of the program's Board of Directors. In addition, it was alleged that the Executive Director double billed the program for numerous expenses, and obtained reimbursement for expenses that were improperly documented. The total sum in issue is approximately $70,000.

In addition, LSC contacted the Internal Revenue Service (IRS) in January, 1989 regarding the former Executive Director's IRS filings. In February, the IRS informed LSC that they had referred the matter to the appropriate District Office for consideration.

Finally, LSC issued to this program a Notice of Corrective Action in February, 1989 and a Notice of Questioned Cost in the amount of $140,000 in March, 1989.

2) LSC referred a matter regarding Chautauqua County Legal Services to the U.S. Department of Justice on March 20, 1987. Specifically, LSC alleged that the current Executive Director and others prepared false travel vouchers and received payment based on such false information in the amount of $20,000. Recently, the DOJ informed LSC that it would decline prosecution in this matter. Among the reasons for declining criminal prosecution was "the limit on the choice of chargeable criminal violation as a result of 42 U.S.C. Section 2996d(e)(1)."

3) LSC referred a matter regarding Memphis Area Legal Services to the U.S. Department of Justice in 1987. Specifically, LSC alleged that the former Executive Director improperly charged approximately $50,000 of personal expenses to the program's credit card. At this time, the DOJ is actively pursuing this matter.

4) LSC referred a matter regarding Texas Rural Legal Aid to the U.S. Department of Justice in November, 1987. Specifically, LSC requested DOJ's review of the status and disposition of a major fund transfer from TRLA to a second organization.

In December, 1987, the U.S. Department Of Justice concluded that the information provided by LSC did not give rise to an action under the False Claims Act. DOJ indicated further that any District Court action by LSC for damages at common law would not be significantly more advantageous than an administrative action under the LSC regulations.

In addition, LSC contacted the Internal Revenue Service in December, 1986 to set forth numerous concerns regarding the accuracy and/or consistency of certain filings by these organizations. These matters were referred by the IRS to the appropriate District Office in 1987.

5) LSC referred a matter regarding Legal Services of Fourth Judicial Services to the U.S. Department of Justice in July, 1986. Specifically, LSC alleged that the former Chairman of the program's Board of Directors and an employee of the program misappropriated and channelled to their own use large known sums of money. The U.S. Department Of

Justice declined criminal prosecution in this case. Subsequently, LSC executed a settlement agreement with this program for $100,000.

6) LSC referred two matters involving the National Legal Aid and Defenders Association (NLADA) to the U.S. Department Of Justice. One matter concerned an allegedly improper gift by former management of LSC of $70,000 worth of equipment to NLADA. The DOJ declined prosecution of this matter.

The second matter concerned alleged improprieties in connection with approximately $2.2 million in grant funds awarded to NLADA. With respect to this allegation, there were two concerns. First, the grants were made with unusually few grant conditions. In contrast with other grants made by the Corporation, this grant attached very few requirements to expenditure of the funds. Second, some of the individuals involved in making the grants subsequently left the Corporation and were immediately hired by NLADA. A prosecution of this matter was not initiated by the DOJ.

7) LSC referred a matter involving the National Clients Council (NCC) to the United States Attorney in the District of Columbia, who subsequently referred the matter to the DOJ. This matter involved allegations relating to the destruction of certain NCC files relating to political activities training and the improper conversion of LSC grant funds by the NCC Executive Director. The DOJ declined prosecution of these allegations.

Non-Referred Cases

1) Migrant Legal Action Program's Board of Directors informed LSC of the misappropriation of approximately $48,000 by its former Executive Director. LSC's review of documents disclosed the fact that program staff members together with the Executive Director, used program funds for personal reasons. In addition, payments in excess of those permitted by the program's personnel policy were made to departing employees. It further appeared from LSC's document review that the funds misappropriated by the Executive Director totalled as much as $60,000. The program recovered nearly $48,000, a sum the accounting firm retained by the program considered reasonable. In addition the program incurred in excess of $13,000 in legal fees and some additional amounts in accounting fees relating to the recovery. On September 24, 1986, LSC initiated an enforcement proceeding to deny refunding to the program. The hearing examiner ruled in favor of the program and the matter subsequently was settled.

2) In response to a special grant condition, LSC learned in February, 1989 that an employee of North Mississippi Legal Services was terminated for misappropriating Client Trust Funds in the amount of about $2,000. The employee involved in this incident reimbursed the program for all sums misappropriated in return for a release from any legal process.

3) LSC learned during an October, 1988 on-site review that DNA Peoples was under review by a Postal Inspector.

Specifically, it was alleged that the program had purchased office supplies at inflated prices from several companies and was overcharged by about $14,000. One employee of the program was terminated shortly after disclosure of the situation.

4) In response to a special grant condition, Channel Counties Legal Services Association (CCLSA) informed LSC that:

> "It appears that CCLSA has suffered a loss of funds due to apparent fraudulent activity by a former employee who served as the administrator-controller .... the loss of funds may approach the amount of $130,000 over an eight year period from 1980 to 1988."

5) LSC determined during a September, 1988 on-site review that San Diego Legal Service's Executive Director used the program's credit card to charge personal expenses pursuant to an "understanding" with the current and former chairs. In addition, it was determined that the program lacked sufficient documentation for its reimbursement of expenses charged to the program's credit card. These determinations were reported to the program in a draft and final monitoring report.

6) An employee of Atlanta Legal Aid Society embezzled about $1,100 of program funds in 1982. Of that sum, $1,050 was recovered by the program from the employee. In addition, the program terminated the employee.

7) LSC issued to Massachusetts Law Reform Institute (MLRI) a Notice of Questioned Cost in November, 1988. In that Notice, LSC alleged that MLRI "loaned" about $26,000 in LSC funds to another organization. On April 3, 1989, LSC's President issued a Final Decision in the matter. Specifically, about $26,277 in LSC grants were disallowed.

8) LSC issued to Essex-Newark Legal Services Project a Notice of Questioned Cost in March, 1989. In that Notice, LSC alleges that the program reimbursed nearly $9,000 in undocumented expenses to program personnel. The program is currently preparing a response to the Notice.

9) LSC learned during a February 1988 on-site review that one of Legal Services Corporation of Alabama's employees had misappropriated client trust funds and other program funds in 1986. Specifically, this employee misappropriated about $3,700. According to LSC's final monitoring report the program was fully reimbursed for all funds taken by its insurance company.

10) LSC issued to Legal Services of Cape Cod and the Islands, a Notice of Questioned Cost (Notice) in April, 1989. In that Notice, LSC alleges that the program acquired and renovated, with LSC grant funds, real property without obtaining LSC approval. In addition, it is alleged that this program entered into an arrangement to purchase and renovate the building with two other entities. The sum in question exceeds $80,000. The program is currently preparing a response to the Notice.

11) In December, 1981, the New Haven Legal Assistance Association, Inc., the LSC grantee, established South Central Connecticut Legal Services Corporation to replace it as the LSC grant recipient. The General Accounting Office found that the Legal Assistance Association relinquished its role as LSC grantee so as to avoid potential restrictions on its activities under the LSC Act. It then used private funds to engage in activities prohibited under the LSC Act.

At the same time, however, it was found to be operating in such a way as to be effectively identical to the South Central Connecticut body, its successor in interest. The two corporations were governed by an interlocking directorate. They shared an executive director. Over the first two and one half years of their existence, South Central Connecticut paid the Legal Assistance Association roughly 70% of its income.

The General Accounting Office found that the Legal Assistance Association used private funds to carry out activities in which it could not have engaged, had it been an LSC grantee, and at the same time used South Central Connecticut as a conduit to bring LSC grant funds into its own treasury. Such activities are clear violations of the LSC statute.

The GAO found the same kind of relationship as that between New Haven Legal Assistance and South Central Connecticut Legal Services Corporation, and similar violations of the Act, when Texas Rural Legal Aid created a "mirror corporation," the Texas Rural Legal Foundation.

UNAUTHORIZED USE OF FUNDS

Senator **Bumpers**. To get on with Mr. Wear, and I appreciate Senator Rudman's observation, let's just say this: That if there is a void, which I doubt, but, if there is a void, I promise you we will take care of it.

Mr. **Wear**. Yes, sir.

Senator **Bumpers**. Please proceed.

Mr. **Wear**. I will certainly work with you all to try to show you where we believe those voids are.

But I believe that the language at pages 33 and 34 of our budget submission would deal with that problem and help us resolve these issues.

The last point that I will make, Mr. Chairman, is that I had an opportunity to read Mr. Whitehurst's testimony. I did not have the testimony of Mr. Raven or Mr. Smegal. I did see testimony what Mr. Smegal delivered on the House side.

I just have, I guess, a couple of comments about that. I read the description of both Mr. Wallace and myself in Mr. Whitehurst's testimony, and I wouldn't have recognized the people that were described in there.

As you may know, Mr. Chairman, I was on the Hill for several years, and for a portion of that time was General Counsel to a major committee, and I think that I have got some sort of a track record here on the Hill. I would hope that the members of the committee and their staffs would check with at least the people I used to work with. I know that Senator Pryor and some of his staff people know me from my time up here and that the record should get somewhat balanced by that.

Mr. Chairman, I thank you very much for having the opportunity to testify. I would be glad to answer any others questions that you all may have.

Senator **Bumpers**. Thank you very much, Mr. Wear.

Mr. Smegal.

STATEMENT BY THOMAS F. SMEGAL

Mr. **Smegal**. Thank you, Senator. Good morning, Mr. Chairman and members of the subcommittee. My name is Thomas Smegal, Jr. I am in private practice in San Francisco with the firm of Townsend & Townsend. I appear today as I have on several other occasions before this committee as a member of the Legal Service Corporation's Board of Directors to comment on the fiscal year 1990 budget.

~~A DIVIDED~~ BOARD

Mr. Wallace and I are among six Republican Board members nominated by President Reagan in 1984. I appear today to focus on what our current Board chairman and our president, Mr. Wear, represent. They represent a slim 6 to 5 majority of its Board. They do not represent myself, and they do not represent the other four members of the minority of the Board who believe that our responsibilities are to provide a program where the legal needs of the indigent are satisfied, are met in the congressional sense, in the sense of this Corporation having been created in 1974.

When you hear Mr. Wallace and Mr. Wear talking about the purpose here being the direct delivery of legal services, the day-to-day legal services, it sounds to me like an old Sinatra hit, "I Will do it my Way." That isn't what I read the act here this morning. I have read it several times recently.

Our purpose here is to provide financial assistance to indigents, and the way Mr. Wear and Mr. Wallace would do it is one way, and the way that Congress has asked us to do it is an absolutely different way.

This is the second year in a row this Board has come forward and asked for a reduction in our funding. Last year, they came up here and asked you for 18 percent less, and then they sent lobbyists up to help you understand why.

This year, they are only asking 4.3 percent——

Senator RUDMAN. They never sent the lobbyists up, Mr. Smegal. They started to send the lobbyists, until we found they were going to spend Federal funds to pay the lobbyists. That was quickly terminated. I am sure it was done in good faith. I never criticize the good faith in people, but it was a bad error in judgment.

Mr. SMEGAL. It isn't the only bad one. There are several others going on here. The $305 million we have been looking at since 1985, when Mr. Wallace and I arrived on this Board, is a bag of money that they keep saying keeps getting bigger and bigger as we get older. It is an error in concept.

A NEED FOR INCREASED FUNDING

In 1985, I think our administration required about $8 million of those $305 million. With our $12 million, that is a 50-percent increase for administration.

Somehow, this bag of money has continued to grow. Mr. Wallace and Mr. Wear point out that there is more money now available for the direct delivery of legal services in 1990 than there was in 1985. How that can be, I don't know.

I run a law firm in San Francisco, and less money does not get you more money, unless they have got some system here in Washington that I am not aware of in California. There is one bag of money. It is smaller than it was in 1985; it is smaller than it was last year. They are asking for 4.3 percent less again.

We have got a 40-percent increase in inflation over the 5 years I have been on this Board, and the funding has gone down. It has gone down dramatically. Fortunately for the indigent in this country, there are other sources of limited income.

As Mr. Raven pointed out, the ABA has many lawyers who volunteer pro bono to come forward and do things. They have got a system across the country that supplies a little bit of money. They don't come anywhere near supplying the kind of money that is needed to carry on this program even in the way that it was being carried on in 1985, when Mr. Wallace and I arrived here.

The problem these two have and the problem that we have seen since Mr. Wear's presence in the last couple of months is their whole philosophy on how this program should be run.

OFFICE OF INSPECTOR GENERAL

Our staff president at our Board meeting in Atlanta on March 3 announced that he needed to divert another $1 million of our funding, of our scarce resources, to hire investigators. He wanted to find some FBI agents and former agents with experience at prosecuting white collar crime, and the way he characterized that, and this is a quote, so that he could "slam the cookie jar lid on a few hands so there wouldn't be as many hands in the cookie jar."

Mr. Wear referred to that again this morning. He has got a list of alleged violations. Fraud, he called them. Fraud abuse I assume the lawyers of the legal services programs are engaged in. What it turns out that we are talking about is pure, ordinary embezzlement at worst.

We have got a situation in California right now where some part-time or full-time bookkeeper before running out to the Philippines was writing checks to cash, getting them cashed and then changing them in a way when the checks came back from the bank. There is a problem there. It has nothing to do with the delivery of legal services by staff lawyers. That is the kind of circumstances Mr. Wear would direct your attention to.

You will see the list. I am sure he will provide it. I am sure—he was several weeks late in providing it to the House. He talked on March 15 about these programs that are doing all of these abusive things for which he needs all these other investigators.

We have got a system in place. It has worked effectively. We spend $5 million a year monitoring programs. As a result of that $5 million a year for the 5 years I have been on the program, that is $25 million on resources only on the Legal Services Corporation side. That doesn't count the time spent by the programs responding being subjected to abuse of monitoring visits. It doesn't even count that. That is just the tip of the iceberg.

Yet, what have we got? We have got some bookkeeper in Oxnard, CA, who embezzled, supposedly, $135,000. So what? That has nothing to do with what we are here for. Five million dollars of monitoring expenditures each year; another $1 million that Mr. Wear wants diverted to the program so he can hire more investigators is an absurdity.

We have got a limited bag of money. Each year, they find another way to spend it rather than giving it to the programs that provide legal services to the poor of this country. We are doing them a disservice. We are doing this program a disservice. It is a tragedy. The whole concept of Mr. Wear and Mr. Wallace's concept of what we should be doing here is a tragedy.

Mr. Chairman, I have got a 23-page written statement. I go into several of these aspects in a little more detail. I appreciate the opportunity to be here again. I thank you for your attention, and I am prepared to answer any questions you may have.

Senator BUMPERS. Thank you, Mr. Smegal.

Mr. Raven.

STATEMENT BY ROBERT D. RAVEN

Mr. RAVEN. Mr. Chairman, members of the subcommittee, up until about 2 years ago, I practiced law in San Francisco. I am now the president of the American Bar Association. I am here, as I pointed out in my written testimony and then my oral testimony will point out how firmly the lawyers in America stand behind the Legal Services Corporation and the act and what we are trying to do here.

We are in a country that faces a crisis in the criminal and the civil justice system. I think it is important just to look at it a little broader than just the civil system for a moment: Thirty-four million crimes in 1986; only 3 million of them got into the system. They overwhelm the system, and the drug problem we have now is even more overwhelming the system.

Less than 3 percent of the National, State, and local budgets go to criminal justice and civil justice in this country. The view of our democracy is less than that. It is a less than adequately funded system all around. That is why we would like to see and recommend that $383.5 million be appropriated to this program for fiscal year 1990.

Let me say at the outset that we are indebted to the members of this subcommittee for their steadfast support for this program and for their constant visits to see that the program is properly managed. It is deserving to think what the legal service system in this country would be like if this subcommittee had not repeatedly provided guidelines and directions as it has given.

There is a long history, which I have outlined in my written testimony, of active and enthusiastic participation by the organized bar in seeking to meet the legal needs of the poor. That has come down starting in about 1915 and in 1965, of course, in cooperation with the Office of Economic Development and Opportunity, programs like this that we are talking about today came into being.

Despite the best efforts of this subcommittee, the program has suffered a decade of decline in resources combined with a hostile governing board at the national level. And we are very hopeful that with a new administration in place and new Board of Directors truly committed to the program and not trying to undermine it will be appointed by the sensible level of funding that will be provided.

There is a crying need for substantial infusion of additional funding in the legal services program for fiscal years. If we start with fiscal year 1981, we know that the Corporation was receiving an appropriation of $321 million, and that level of funding enabled us to have two lawyers for every 10,000 poor people.

Of course, we have a race in this country with up to 20 attorneys for 10,000 people for the other people in the country. So it has been estimated that even at that funding level that we had in 1981, only about 20 percent of the legal needs of the poor were being met.

But that high water mark, as low as it was, has been very much eroded by budget cutbacks and by inflation, and to return to that fiscal year 1981 level, we would have to ask for an appropriation of $500 million just to return to the 1981 level.

We know all the problems, these problems of shortness of money, and out of respect for that, we have come in with less. There has been a great effort in the bar to tap other sources throughout this period in 1981. I started back when I was the president in California in 1981. We now turn out $50 million a year for legal services in California.

AN INCREASE IN PRO BONO ACTIVITY

There has been a great increase of pro bono in this country, which started 5 years ago or so with about 50 local programs. We now have 625 local programs. We have about 130,000 lawyers that are committed to some type of pro bono effort, plus the fact that relatively short changes in the profession, because we don't talk enough about the fact that since the beginning of the profession, lawyers in rural communities, lawyers in small cities, lawyers in neighborhoods, and large cities have always served the poor. The barber comes in, they serve him. If they get some money for it, fine; if they don't, fine, they still render service.

I would suggest to you that that amount of pro bono, which is a part of the formal program, is as large as the formal program and larger than what we are asking for here. We are now completing the first national legal needs survey of low-income people. We plan to release it next month, and that survey reveals that low-income households meeting LSC eligibility criteria experience 1.08 legal problems annually for which little legal help is obtained. This translates to approximately 10 million legal problems each year nationwide.

Since the appropriation grantees serve about 1.5 million cases annually, that figure underscores the fact that less than 20 percent of the legal needs of the poor of this country are met. No doubt, we will be able to do better for awhile, but then we will lose that, because then it is just question of when the technology and electronic data techniques get to the stage where you can account for these subparts of the account, and we will lose that money, eventually.

We will get more pro bono out of the lawyers of this country, although I they think they are performing very well now. I spent yesterday on Law Day in Chicago meeting with 65 law firms from around the country and trying to figure out how we can do more, how we can help sole practitioners and small firms do more by sharing training facilities with them, by having senior partners in firms, active members or young people that are going in solo and are willing to take a case but need a little counseling.

So we are trying to do all of that. I know my time is short. I wanted to talk just a little bit about competitive bidding, but perhaps we can cover that.

Senator BUMPERS. I would like to hear your comments on that. If you can do that rather briefly, I would like to hear that.

COMPETITIVE BIDDING

Mr. RAVEN. All right, I can do that, I can give you an overview of that. I know when I was president of the State bar of California in 1981, this was a large question out there in other parts of the country in criminal defense. It didn't work. We had tremendous problems with it. That is all documented. You know, this is a little different business than delivering cookies. It is much more subtle than that; it is much more difficult than that.

I know the situation in a county in northern California where a lawyer that had never handled a criminal case bid in defense work for that county. He hired three people out of law school. They pleaded them all guilty in the morning, and they did their civil work in the afternoon. [Laughter.]

That is the kind of thing you have to worry about. It is hard to put specs on this kind of work. People come in with individual problems and individual situations; that is what lawyering is all about. I don't think this will work. But I would say this: Even if it does, I think Congress' will should be carried out on this, and Congress made it clear that only a new lawyer was to look at this and develop and come forward with a claim for Congress to look at.

This Board is trying to take $1 million out of the till this year to start on that job already. I don't think this Board, the majority of this Board has shown the capacity to do something like that. In fact, it has shown quite the contrary. I think we ought to have people. Congress has asked someone to look at it in due course. We ought to look at it and we ought to have the cooperation of the bar, but this Board with its present majority is not the one to look at it.

Senator **Bumpers**. Mr. Raven, I thank you very much. I am most gratified by your statement and the attitude of the ABA. It is not known as a citadel of liberalism, but their steadfast support for this program has really been one of the things that stiffened the spines of a lot of people who might not otherwise have been as committed to this program as they have been. We appreciate your taking your time to be with us this morning.

Mr. Whitehurst.

STATEMENT BY WILLIAM O. WHITEHURST, JR.

Mr. **Whitehurst**. Thank you, Senator. My name is Bill Whitehurst. I am a past president of the 51,000 members of the State bar of the State of Texas. I suppose I should apologize for that number of lawyers in one State. It is small. [Laughter.]

Senator **Bumpers**. We won't tell if you won't.

Senator **Kasten**. Compared to California, it is small.

Mr. **Whitehurst**. I am also here on behalf of an ad hoc group that I helped found called Bar Leaders for the Preservation of Legal Services to the Poor, involving over 130 bar associations in every State of this Nation. That group was organized for one reason and one reason only, and it has to do with what we have heard here this morning.

I guess my main concern in sitting here and thinking that these two fine fellows from the Legal Services Corporation have 10 minutes, total, to come here and tell you about why they need an appropriation for legal services, and I wrote down the words that they have used throughout their testimony. It was full of the words fraud, waste, prosecute, embezzlement, secret weapon, war. You would think that we were having a hearing this morning on organized crime.

No one has said the good things about legal services. Where are those? Why haven't those been said this morning? Why haven't they been said in the other Board meetings of the Legal Services Corporation?

The problem that we in the organized bar have is that we are tired of listening to intellectually dishonest rhetoric. The real problem is that this Board has lost its credibility, it has lost the competence of the lawyers of this Nation, and it has lost the competence of the Congress and the Senate of the United States.

It is a problem now that we must realize, when we hear this rhetoric, that it must be judged. In Texas, we have a good working 14 programs. We have had hearings. The Governor appointed a Select Committee on Judicial Affairs and involved with that was a review of legal services for the indigent in the State of Texas, and it gets rid of some of this rhetoric.

So we put out a call through the senate for people to come forward and bring the evidence on all of this. I will tell you that no one came forward. We had a second hearing and issued specific invitations to those who had made these allegations, and again, no one came forward.

When I was president of the bar, I did a research. We maintain records on every grievance that is filed against lawyers in the State of Texas, and I am here to tell you that in the State of Texas in the history of the Legal Services Corporation, not one grievance has been filed against a Legal Services Corporation lawyer. That is the kind of integrity, that is the kind of program that we have in Texas.

That doesn't mean to say that we don't have problems among lawyers and we don't have problems among our programs. But I want to emphasize this morning that there are some things positive to say about those throughout the field who are performing the day-to-day legal services.

I think this committee needs to be reminded that in 1988, there were over 1,388,000 cases closed by the lawyers out in the field. I wonder how many more could have been closed had so much time not had to be spent on fighting the Legal Services Corporation Board of Directors. I wonder how much more we as presidents of bars could have done in developing pro bono projects had we not had to put our time and emphasis on fighting a runaway intellectually dishonest Board.

That is the problem, and that is where our efforts need to be made, and that is where we need your continued support. I would suggest a higher appropriation. Dan Rather, I think, put it well on his radio show the other night that, you know, one Stealth bomber would be double what we get for legal services.

Senator BUMPERS. We haven't finished building one yet, though. [Laughter.]

Mr. WHITEHURST. My concern today, Senator, is by the time you finish building it, it will be three times, so I will still stick with the Stealth bomber; we will take whatever it costs.

The other thing that I want to tell this committee is that we are concerned. The lawyers of this Nation are concerned that a new LSC Board needs to have a priority, and we ask that you do what you can to make that happen.

Unfortunately, I think this Board today is in a panic syndrome. We see the example of that in the number of regulations. They realize that they are going out; they realize that there are things that they have not been able to accomplish, and we see this panic syndrome. I ask you to be aware of that.

Finally, they say that our good cousin from the State of Texas has a secret weapon in the form of State and national support groups. President Johnson probably did have a lot of secret weapons, but this was not one of them. Our State support group in the State of Texas is the glue that holds us together. It is a simple business, logical way to conduct business. They prevent us from having to reinvent the wheel. They give us the source for our pro bono program to go to.

Mr. Wallace says that we view with disdain his efforts to cooperate. I will tell you that the truth is we have made every effort. Three hundred, six hundred letters going to the Legal Services Corporation asking them to consider our viewpoint on a particular subject has been spurned repeatedly. It simply is not there. We could take each of those letters and debate them, and the fact is that what we have is rhetoric. We do not have any truth or substance behind them, and we are tired of it; we are concerned about it, and we ask your help and continued support.

More than that, for the purposes of this hearing, we ask that you consider a realistic budget that does what President Bush said in his message. His message yesterday on Law Day, and I think it is very appropriate that that happened a day before we met here, is greater access to justice, and he didn't say minimum access to justice. That is all we have ever asked for, is minimum access to justice, but he says access to justice.

He recognized that in order for us to have this kinder and gentler Nation that he wants, we must have access for our citizens to the legal justice system. That is what distinguishes us from every other society in this world.

You have an opportunity to make his words real instead of just words, and I ask you to do that on behalf of the lawyers and the citizens of the United States. Thank you very much.

PREPARED STATEMENTS

Senator BUMPERS. Thank you, Mr. Whitehurst. Thank you, gentlemen. We will place all your submitted statements in the record at this point.

[The statements follow:]

STATEMENT OF MICHAEL B. WALLACE

Good morning, Mr. Chairman and Members of the Subcommittee. I am Michael B. Wallace. I am a partner with the law firm of Phelps, Dunbar, Marks, Claverie and Sims of Jackson, Mississippi. I have appeared before this Subcommittee twice in the past as a member of the Board of Directors of the Legal Services Corporation. This is the first time I have appeared before you as Chairman of the Board.

I am here to convey LSC's request for an appropriation of $295,314,000 for fiscal year 1990. That request cannot be properly understood except in the context of the history of our prior requests since ten members of this board took office in December of 1984. You have been told, and you undoubtably will be told again, that a majority of this board is attempting to destroy the Federal system of providing legal services to the poor. You have not been told the truth. The truth is that every member of this board supports the Federal provision of legal services to the poor, as ten of us testified under oath before this body confirmed us. The truth is that we have increased the funds for the delivery of legal services to the poor in our four and one half years in office. The truth is that every regulation we have promulgated, with one partial exception, has been accepted by the Congress. The truth is that Congress has endorsed our and President Reagan's proposal to improve the efficiency of legal services by introducing competition, as required for other federal contracts. You do not have to take my word for it. As Al Smith used to say, "Let's look at the record."

This budget, as have prior budgets dating back to Fiscal Year 1986, focuses LSC resources on local day-to-day legal services for the eligible poor and provides the same amount of funds to basic field grantees as last year. When we took office, the existing appropriations bill for FY85 provided $265,770,753 for direct delivery of legal services in the categories of basic and supplemental field programs, native american programs, and migrant programs. Our first budget request in 1986 sought to increase the direct delivery total to $274,032,369. The budget I bring you today seeks $282,069,000 for direct delivery. I do not contend that an increase of 9.4 % over four years is exorbitant. It is not; but is a lot better than many social programs have done during the era of the Gramm-Rudman-Hollings Act.

Moreover, the Board has worked to expand the poor's access to legal assistance through other resources. For example, LSC provided seed money to many state bar associations to help them organize Interest On Lawyers Trust Accounts (IOLTA) programs. Now forty-eight states have programs and are providing over $30 million annually for legal services for poor individuals. Indeed, from FY85 through FY88, the total funds available to our grantees from non-LSC sources have increased from 81,450,358 dollars to 124,856,499 dollars.

Other initiatives have also proven successful. Law school clinics are providing needed services in many communities, as well as instilling in law students the importance of pro bono work on behalf of the indigent. LSC's Private Attorney Involvement requirement has also encouraged many attorneys to become involved in pro bono work. This Board is proud of its success in using a relatively small amount of federal funds to engender a growing effort by state, local, and private organizations to provide legal assistance to those who cannot afford to pay. We can never rely on the federal government to meet every unmet need, but we can use federal funds to encourage combined federal, state, and private effort.

For years, Legal Services board members have argued that the efficiency of legal services providers can be improved by permitting competitive bidding for grants. Under current law, the Corporation is forced to fund, year after year, the same grantees with little regard for a programs' inefficiency, or mismanagement; or, in some cases, misuse of federal funds. The time and cost involved in a defunding process has become so prohibitive that it is rarely a viable option. The last defunding action cost the Corporation approximately $350,000 in legal fees.

Programs that are virtually guaranteed annual funding lack the necessary motivation to be accountable to their clients or to the taxpayers. Moreover, in setting up the federal legal services program, its founders were very successful at exempting the program from all the customary statutory and executive branch controls that govern other federal grant programs.

A partial remedy for this defect, however, should soon be in place. For the first time, in its FY 1989 appropriations measure, Congress has agreed that this system of "presumptive refunding" should be replaced by competitive bidding for grants. The Corporation is developing a system of competitive bidding that can be implemented after the close of FY89. Competition will permit those who make and execute this nation's laws to hold grantees accountable for their use of Federal funds. Competition will also allow LSC to select providers who can offer the best legal services available for poor individuals in their area.

Notwithstanding the Congressional endorsement of competition, many people question whether that tool can usefully and practically be applied to the provision of legal services. I share many of those same questions. For that reason, the board's committee on the provision of legal services to the poor, under the chairmanship of our newest member, Blakely Hall, will begin public hearings on the subject next month. Our staff is now preparing a model which will be available for public comment before the hearings begin. I strongly encourage all those who are interested in the future of legal services for the poor to participate in those hearings and give the board the benefit of their wisdom. Whatever the arguable deficiencies of competition, there is no excuse whatsoever to continue to leave the legal services system frozen in the mold in which the Carter-Mondale Administration left it when it went down in defeat eight and one-half years ago. The question to be resolved by people of good will is who can best deliver the services needed by the poor in each locality. No one has an eternal right to be awarded public grant funds.

As former chairman of the board's committee on operations and regulations, it gives me special satisfaction to note, that with one partial exception, Congress has accepted each of the ten sets of regulations we have promulgated from 1984 through the end of 1988. As you know, that partial exception involves regulating lobbying and other political activities. The history of the federal legal services program has been marred with repeated allegations of such activities by our grantees. This political activity endangers the popular support of a program that was structured to avoid political entanglements. We moved to correct that situation by clarifying and strengthening the language of 45 C.F.R. Part 1612. Our extensive negotiations produced a regulation which was adopted unanimously by our board and with which the representatives of our grantees agreed. To the best of my knowledge, no member of Congress has ever questioned the merits of this regulation. The restrictions of the Corporation's ability to enforce that regulation with regard to private funds stem solely from doubts as to our constitutional authority. I am glad to see that in the FY89 Appropriations Bill Congress resolved those doubts in the Corporation's favor; the new board will be able to enforce the regulation in full.

During 1989 the board has voted to promulgate four new sets of regulations. Only one of those, the regulation implementing the provisions of the Immigration Reform and Control Act, has been published to go into effect later this month. This committee has expressed its opposition to that regulation, asking the Corporation to wait for the Department of Justice to act. While this committee may block the enforcement of that regulation if Congress and the President concur, I suggest the committee's concern is better directed towards the Department of Justice. We have repeatively delayed promulgation of that regulation on the assurance of Justice Department officials that their own regulation would soon be issued. At the urging of the House Judiciary Subcommittee with oversight authority over LSC, I wrote to request an Attorney General's opinion on the subject. I have never received a reply. We will defer as much as we reasonably can to members of Congress and the requests of other government officials, but our board is charged by law with the responsibility of conducting the business of the Corporation. The Justice Department's failure to do its duty is no excuse for failing to do ours.

I should note that Congress has blocked the enforcement of one regulation which was never promulgated. In 1987, our board began hearings on proposed regulation to enforce the McCollum Amendment, governing the composition of the governing boards of our corporate grantees. Without waiting for our board to hear testimony and to revise the proposed regulation, and without debate in either house, the conference on the FY88 continuing resolution blocked further regulation in this area. I cannot tell you what the problem is with the proposal, because no one has ever told me. The next year, however, Congress made plain that it accepted our idea in principle, because it has authorized our successors to put it into effect.

The only one of our proposed reforms with which Congress has not agreed is our effort to eliminate direct funding for state and national support centers which provide little, if any, direct delivery of legal services to poor people. These centers were established for the primary purpose of advancing the law reform agenda of the 1960's through lobbying, and so-called impact law suits. That is not my opinion; that is fact. As Casey Stengel said, "You could look it up." This law reform agenda is the primary source of the continued public criticism of the program, and it is the reason that this town's largest newspaper continues to refer to the Legal Services program as "Lyndon Johnson's Secret Weapon." Lyndon Johnson's agenda has been repeatedly repudiated at the polls since 1968, we do not beleive there is any reason to continue to fund it over twenty years later.

The failure to appreciate the distinction between law reform and direct delivery is, I believe, the major cause of the criticism this board has received. Our record shows that, while we have consistently opposed law reform, we have consistently supported direct delivery. It is true that many field programs have told us, as they have told you, that they support continued direct funding for support centers, though we find little evidence that they actually use them. What appears to have happened is that the support centers and their advocates have convinced local programs that, once the support centers are gone, the local programs will go next. This simply is not true, but it is not hard to understand how local programs would follow Benjamin Franklin's admonition that they must all hang together, lest they all hang seperately.

This year, we are asking Congress for other needed reforms. When this Board and previous Boards were presented with evidence that particular programs had misused funds, we were dismayed to find that we had little recourse. The Justice Department has declined to prosecute even egregious cases of misuse of funds because LSC is not a federal agency, and it is therefore unclear whether relevant provisions of federal law apply to legal services grantees. Defunding is a heavy-handed and expensive tool to use to correct abuses committed, in some cases, by only one employee. Consequently, in its Fiscal Year 1990 budget request, LSC is requesting that Congress include language that would apply 27 Federal antifraud and antiabuse provisions to the Corporation's grant recipients and their employees. This would permit the Corporation to hold grant recipients accountable for their use of federal funds. Absent such provisions, it is difficult for LSC board members to discharge our fiduciary duties.

The Corporation's budget request includes a draft of language containing the specific provisions suggested for consideration by Congress. The suggested language would provide the means through which LSC's grantees and their agents and employees can be held accountable, both criminally and civilly, for any fraud, filing of false statements, stealing, or improperly disposing of money, property, or records received, purchased, or generated in connection with any Corporation grant or contract, in the same manner as other recipients of Federal grants.

For example, LSC has suggested that Congress include auditors employed or retained on a contractual basis by the Corporation within the definition of the term "Federal auditor" for purposes of the new section 1516 of Title 18 of the United States Code. A Federal auditor, under this section of the Code, is one who is employed to perform an audit or a quality assurance inspection. This term could, and should, include auditors employed by LSC who make monitoring visits on behalf of the Corporation. This provision provides for criminal sanctions for anyone who "endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person receiving in excess of $100,000." Many LSC grantees receive over $100,000 in funding each year and would, therefore, be subject to this provision.

The Corporation has suggested inclusion of LSC auditors within the ambit of this provision because the Corporation believes that this would alleviate many of the problems that it faces when attempting to carry out its statutorily mandated function to ensure compliance with the LSC Act and the regulations. We believe that the Corporation's grantees will give the Corporation greater access to program documents, because the possibility of criminal sanctions will provide an effective deterrent against denying such access. The Corporation will then be able to accomplish its monitoring mission with less delay and impediments, and will be able to provide timely monitoring reports to recipients, to other sources of funding for these recipients, and to the general public.

The incorporation by reference of the provisions relating to false claims, false statements, and perjury under Title 18, as well as the provisions of Title 31 relating to the proper expenditure of appropriated funds, constitute a package of related statutes that will make LSC grantees accountable for their use of grant funds. LSC grantees currently may file applications for funding that state that grant funds will be used for authorized purposes and subsequently use the funds for unauthorized purposes. The possibility of prosecution for filing such false statements should serve as a deterrent to such improper expenditures in the future.

Currently, the Corporation has limited means through which to ensure accountability. The non-Federal status of the Corporation poses substantial impediments to holding these individuals either civilly or criminally liable for any fraud or abuse in connection with the Corporation's grants or contracts.

The Corporation's past experience in dealing with fraudulent and abusive practices amply illustrates the need for the application of these provisions of Federal law to LSC grantees.

At present, LSC has limited power to obtain restitution of funds that are improperly spent by grantees or contractors. In the past, LSC sought prosecution of these improper expenditures under the False Claims Act. Unfortunately, because of the Corporation's purported status as a non-profit corporation (rather than a Federal agency), the Justice Department told us that the facts in these cases did not give rise to violations of the False Claims Act. If the False Claims Act, as well as the other Federal laws cited in the proposed amending language, were to be made applicable to LSC's grantees, LSC would be in a position to recover these misspent funds and to use them for appropriate purposes.

We were pleased to find some sympathy in the other body for the proposition that Federal funds received by LSC grantees should be subject to the same protections as Federal funds received from other Federal grantees. Rep. Barney Frank, chairman of our authorizing subcommittee, told us in March that he is "inclined to think that the Federal criminal law ought to follow the Federal funds." We hope that you will agree and include this language in our Appropriations Act for Fiscal Year 1990.

These changes, competitive bidding, stronger prohibitions on lobbying and political activities, and the application of Federal criminal provisions to LSC, will correct some of the problems that have beset the Corporation--but not all. Many of the problems with the Corporation stem from its organic structure. The Legal Services Corporation receives its entire funding from Congress, and disperses Federal funds. Its Board of Directors is appointed by the President by and with the advise and consent of the Senate, but it is not a Federal agency. This subcommittee's former chairman has called it a "quasi-private corporation," but as Supreme Court Justice Jackson said many years ago, "The mere retreat to the qualifying 'quasi' is implicit with confession that all recognized classifications have broken down, and 'quasi' is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed." The Legal Services Corporation is definitely a very disordered bed. In fact, given the Supreme Court's recent decisions in Bowsher, Morrison, and Mistretta, I do not beleive that the Court would find the Legal Services Corporation constitutional.

Congress intended for LSC to be an independent entity. The result is that LSC is isolated from accountability to any elected official. The President cannot remove members of the Board of Directors, once appointed. The Court made clear in the Morrison case that the Ethics in Government Act was valid only because the President could remove the counsel. In Bowsher, the Court declared the Gramm-Rudman-Hollings Act unconstitutional because the President could not remove the Comptroller-General. The Court held that "to permit the execution of the laws to be vested in an officer answerable only to Congress would, in practical terms, reserve in Congress control of the execution of the laws." The constitutional structure of separated powers does not permit Congress to execute the laws. But LSC suffers from a further constitutional defect; not even Congress can remove LSC Board members. Quite literally, the Legal Services Corporation, with its 326 grantees, and with its $308.5 million in taxpayers' money, is politically unaccountable.

Evidence that the current structure and performance of the federal legal services program are unsatisfactory is that

Congress has been unable to pass a new authorization bill for LSC since 1977, twelve years ago. For nearly a decade, LSC has survived from year to year on annual appropriations language. Its uncertain status makes it impossible for the Corporation to implement policy on a long-term basis since there is no guarantee that restrictions or authority stated in one annual appropriations act will appear in the next. For example, LSC, with Congressional blessing, has begun to develop and implement a competitive bidding process. If that process is blocked by future appropriations acts, the efforts of the Corporation, and the efforts of hundreds of potential bidders, will go to waste. This uncertainty and others can be eliminated by authorizing the legal services program as a federal agency with a stable, statutory basis, as the members of this subcommittee who have struggled with your oversight responsiblility for many years can surely attest.

Moreover, LSC is run by eleven part-time directors, all of whom have other full-time occupational pursuits. None of the current board members even live in the Washington, D.C. area. We cannot be fully informed about the day-to-day functioning of the Corporation. I know that this has been a continual source of frustration for this subcommittee, as it has been for us. I recall that in hearings before this subcommittee two years ago, the ranking member said to my fellow Board member, Tom Smegal, "As a matter of fact,... I would like to see the Board abolished completely and [the Corporation] run like a Federal agency."

I am pleased to agree with the ranking member. I would hope that this Congress and this President can produce a new authorization bill this year that establishes the legal services program as a Federal agency in the Justice Department. This would enable the program to be run by a full-time administrator, appointed by the President and confirmed by the Senate. There is no reason for Congress and th Corporation to continue to misunderstand each other simply because you lay eyes on the Corporation governing officers only once a year.

The Legal Services Corporation and its grantees, which in many instances receive nearly all of their funding from the Corporation, should be treated no differently from other Federal programs or agencies. The Corporation's existing structure operates to insulate the Corporation and its grantees from the checks and other controls that apply to Federal agencies. The current structure should give way to one that is subject to the same controls and safeguards as other Federal agencies, one that is responsive and responsible to the President.

The legal services program would then be subject to all provisions of federal law applying to similar grant-making entities. If the federal legal services program were reauthorized as a federal agency, the competitive bidding process would fall under OMB regulations, including OMB circulars. OMB circulars are an important part of the developing body of federal grant law and will enable legal services to rely on existing standard practices in its competition. The existing federal grant laws will act as a precedent for LSC and remove the need to develop new precedent as each new issue regarding LSC grant funds arises.

The lack of authorization seriously endangers this program. Last year, true to its rules, the other body appropriated no funds for LSC. Funds were provided in conference, but this program's beneficiaries should not have to depend on the willingness of Congress to disregard its own rules, a willingness that may one day disappear. While this subcommittee cannot cure that problem, I urge you to encourage your colleagues to address it this year.

What this subcommittee can do, at a minimum, is to place language in our appropriations bill that would apply Federal laws and practices to LSC. I hope that our successors will have the benefit of a reauthorization act that will cure the constitutional defects of LSC and give the federal legal services program a solid foundation for the future.

It is my hope that the future will not duplicate many problems of the past. I take it as common ground among us that there were abuses committed by some of the Corporation's grantees during the Carter-Mondale Administration and the first years of the Reagan-Bush Administration. It is also common ground that there are many fewer abuses today, although we may differ as to the gravity of the remaining problems. Some members of this subcommittee no doubt believe that the funding restrictions added during this decade have been sufficient to cure the problem. Nevertheless, many of the people responsible for those abuses are still in place, just as they have been since they were first funded during the Johnson and Carter Administrations, and I fear that they will return to their old habits should this board or its successor relax its vigilance.

There is no substitute for human diligence, but the reforms that the Congress has now accepted will go a long way toward ensuring that our grantees concentrate the taxpayers' funds on the direct delivery of legal services to the poor, instead of law reform. I regret that, on the evidence of last years appropriations act, Congress is not willing to entrust this board with the responsibility of implementing those reforms, but that disappointment is a minor one. Scripture reminds us that Solomon built the temple as David could not, because of " the wars which were about him on every side." The wars which beset this board on every side began before we got here and will continue after we are gone. It is our satisfaction that, with the reforms which Congress has already agreed, we have given our successors the weapons with which the war for the non-political delivery of legal services to the poor will be won.

Mr. Chairman, I am grateful for the opportunity to appear before your Subcommittee here today and would be pleased to respond to any questions you or the other members may have.

STATEMENT OF TERRANCE J. WEAR

Good morning, Mr. Chairman and members of the Subcommittee. I am Terrance J. Wear, President of the Legal Services Corporation. Since accepting the position of LSC president on July 1, 1988, I have learned a great deal about the Corporation, its relationship with the programs it funds, and the unique problems it faces in fulfilling its mandate to make available civil legal assistance to eligible poor individuals. During my tenure at the Corporation, I have concluded that, despite certain small improvements we have made with respect to program compliance, we cannot assure Congress that the Corporation's mandate is being fulfilled without further reforms.

I would first like to say a few words about the Corporation's budget request. Second, I would like to discuss the Corporation's position on basic local day-to-day legal services and the establishment of "priorities" that purportedly control which cases are accepted and which are not. Third, I would like to talk about the issue of competition and what the Corporation believes is needed, in addition to the language incorporated in the FY 1989 appropriations act, in order to insure the long term success of a system of competitive bidding. Finally, I would like to talk about reforms that are needed for greater program accountability.

Fiscal Year 1990 Budget Request

The Legal Services Corporation requests an appropriation of $295,314,000 for fiscal year 1990. This figure reflects the LSC Board's recognition that the mandate of the Legal Services Corporation is to make available quality civil legal services to eligible poor individuals who cannot otherwise afford legal assistance. Consequently, the budget is structured to allocate maximum funding to local programs that provide direct civil legal assistance to indigent clients. No funds are allocated for research or training centers or for other services not directly related to the local delivery of civil legal assistance.

The Corporation's budget request represents an 18 percent increase over last year's budget request and a 4.3 percent reduction from the Corporation's FY 1989 appropriation. In proposing this budget, the Corporation took into account limited Federal resources and the increasing private, State, and local funding available for legal services. In addition, the Corporation proposes to eliminate direct funding of "backup" programs that, at best, are only marginally involved in the local delivery of basic day-to-day legal services to eligible poor individuals. The basic field programs are not adversely affected by the Corporation's proposed budget; we propose that these programs be funded at their FY 1989 level and that $9,698,000 be added to their funding.

Direct Local Delivery of Legal Services

The Corporation's budget request of $295,314,000 includes $283,169,000 for the direct delivery of civil legal assistance to eligible poor individuals at the local level. This figure includes funds for basic field programs, Native American programs and components, and law school clinics.

Funds in the amount of $275,047,000 have been requested for the basic field programs. This figure includes $264,439,000, the amount appropriated by Congress for local field programs in fiscal year 1989. In addition, $1,000,000 was added to this figure to fund supplemental field programs, which include judicare projects, reduced fee contracts for service, and other bar association initiatives, such as pro bono referrals. These programs have been included in the basic field line because they represent alternative means of providing local legal assistance to poor individuals.

The Corporation is also requesting $9,698,000 in additional funding for the basic field programs. This amount is equal to the amount appropriated in FY 1989 for migrant programs and will be used by the basic field programs to provide legal services to eligible migrant and seasonal workers, along with other eligible clients served by these programs. The Corporation believes that this configuration represents a more equitable distribution of funding for basic local legal services. The sum of these three items totals $275,047,000, the amount of funds requested for the basic field programs.

In addition, the Corporation is requesting $7,022,000 in funding for the Native American programs and components and $1,100,000 for the Corporation's law school clinic programs. These amounts represent the levels appropriated by Congress for these programs for FY 1989.

Management and Administration

In its budget request, the Corporation is requesting $12,145,000 for management and administration. This amount includes funds for Corporation management and administration, competitive bidding and program development, and training development and technical assistance.

The amount requested for Corporation management and administration is $10,250,000. This figure is a realistic assessment of the annual costs of administering the legal services program; these costs have averaged approximately $10,700,000 over the last four years. Congress has appropriated less than this amount in the past because of the availability of unused funds from prior years to help the Corporation meet expenses.

In line with the Congressional imperative to "develop and implement a system for the competitive award of all grants and contracts," the Corporation has requested $1,000,000 for implementing a competitive bidding system, including the development and dissemination of requests for bid proposals. The Corporation will also use a portion of these funds to educate prospective providers of legal services and their communities about the availability of Federal funds to pay for the provision of legal services to poor individuals and to make the actual awards of funds to successful competitors.

The Corporation is also requesting $745,000 for program development and $150,000 for training and technical assistance. Of the $745,000 earmarked for program development, $500,000 will be spent to fund mediation, arbitration, and other alternative dispute resolution programs and pilot projects. The remaining $245,000 will be spent to fund pilot projects designed to examine alternate delivery methods for legal services. In the past, funds from this category have been used successfully to develop IOLTA funding for legal services, the law school clinic programs, and a comparative study of legal services delivery systems.

Of the $150,000 allocated for training and technical assistance, $50,000 will be used to train client board members in their duties and responsibilities as board members. The remaining $100,000 will be used to train mediators and other alternative dispute resolution professionals. These expenditures will enable the client board members to play a meaningful role in the management of their programs and will enable alternative dispute resolution to become a meaningful alternative to litigation for individual poor persons.

The sums requested for management and administration ($10,250,000), the implementation of competitive bidding ($1,000,000), program development ($745,000), and training and technical assistance ($150,000) total $12,145,000, the amount requested by the Board for Management and Administration.

Conclusion

This budget request reflects the LSC Board's commitment to the mandate entrusted to the Corporation: to make available quality civil legal assistance to eligible poor individuals. The Corporation submits this budget as the best use of resources to meet that goal.

LOCAL LEGAL ASSISTANCE

The Corporation recognizes the need among the poor for civil legal assistance. Each year, legal services programs across the country report that they turn away many individuals eligible for assistance. These are individuals with specific grievances and problems. Often assistance by an attorney, a paralegal, or a legal secretary can mean the difference between resolving and not resolving the individual's problem.

It was the recognition that Justice belongs as much to the poor as to the rich that moved Congress to provide civil legal services for eligible poor individuals. The Congressional debates concerning the creation of LSC make clear that Congress intended the Federal legal services program to make basic civil legal assistance available at the local level to these people. Congress recognized that poor individuals face many problems: disputes with landlords, domestic problems, unscrupulous vendors, foreclosure, eviction, spouse or child abuse, or problems with an intractable bureaucracy. Without local legal assistance, these problems can be devastating to individuals.

One example of the "unmet reed" that has serious consequences for subsequent generations is the inability of many poor women to collect child support. According to an article written by a legal services attorney in the Clearinghouse Review, only 47% of women entitled to receive child support actually receive the full amount. Lack of parental support is a major factor in the increase in the number of poor women and children in America today. This is a problem for which there is, in most cases, legal recourse and is an example of a situation in which legal assistance can help a poor family escape poverty and become independent. Yet, handling this type of case is not a priority for many legal services programs.

Most legal services programs report that they no longer accept domestic law cases, except in instances of child or spouse abuse, because they have "insufficient resources." In a Clearinghouse Review article that appeared in October, 1988, several attorneys from legal services programs across the country describe the low priority that is placed on domestic law cases by legal services offices. Domestic law, including child support cases, is viewed as drudgery and is frequently rejected in favor of other cases. Many legal services attorneys apparently prefer to spend their time on broader social issues than on handling the domestic legal problems of individual poor persons.

The question of "unmet needs" for legal assistance cannot be divorced from the question of program priorities. Legal services attorneys often refer to the large "unmet need" for legal services among the poor. A New York Times editorial on legal services in February 1989 states that "only about 15 percent of the need is now being met." There is no indication of how the New York Times measured this "need". A 1987 study of the legal needs of low-income persons in Massachusetts, however, concluded that "only one in six of the civil legal needs" of low-income individuals is currently being met. Those who speak of "unmet needs" generally do so in criticism of LSC's ability to fund larger grants to providers of legal services.

The methods used to "measure" need, however, appear to affect substantially the outcome of the study in question. The Massachusetts study surveyed poor individuals who had been eligible for assistance from LSC-funded providers of legal assistance. Of those individuals who indicated that they had a "family matter" legal problem, 75% reported that they had received legal aid. Of those who had a legal problem with government benefits, 100% replied that they had received legal help. Although the study does not specify the source of the legal aid, most of these individuals received assistance from programs funded by the Legal Services Corporation. The problems mentioned here represent the kinds of problems the study's authors believe should be handled by programs receiving funding from LSC.

The large percentage of "unmet need" identified by the Massachusetts study was in an area termed "unrecognized" legal needs. What are examples of these "unrecognized" legal needs? Low-income people were asked, among other things, if they ever had a problem paying a utility bill, or if they ever had roaches in their apartment, or "lived in public housing and had a problem with payment of rent, children, owning pets or other problems." All of these were classified (by those who performed the study) as problems for which the services of a Federally-funded legal services attorney is required. These so-called "needs" were classified as "unrecognized" by the authors of the study because the poor individuals did not realize they needed a lawyer. This measure of "need" is dubious at best.

By whatever measure, it is clear that the "priorities" used to determine which clients will be served are in need of revision. Too often, eligible clients with routine or mundane legal problems are shunted aside in favor of more "glamorous" cases, some of which may generate legal fees for the program involved.

One complaint referred to LSC last year by a Congressional office was from an Alaskan Indian who faced foreclosure and was in danger of losing his boat. The man was a fisherman; the boat was his livelihood. He sought aid from the local legal services office to help him file for bankruptcy to save his boat. The legal services office declined to assist him in filing for bankruptcy, but asked if he would join in a class action concerning subsistence rights of Native Americans in Alaska. The client understandably complained that he was more interested in keeping his boat and his job than in joining a class action suit brought on the basis of social issues.

In Texas, a private attorney participating in a program's Private Attorney Involvement plan intervened in a proceeding before the Texas Public Utility Commission (PUC). The proceeding concerned the economic viability of the South Texas Project, a nuclear power plant under construction. Counsel for the utility company complained to LSC that the program's "client" stated in her deposition that she had no knowledge of the proceeding before the Commission, the South Texas Project, nuclear power plants, their fuel, or their costs. However, she did state that she had asked the attorney to help her with her "high" utility bills. She learned of her intervention in the case 13 months after the motion to intervene was filed and actually saw the motion some 15 months after it was filed.

Another example was reported by the Atlanta Constitution last year. An Atlanta woman identified as Mary Doe in the case Doe v. Bolton, the companion case that, with Roe v. Wade, legalized abortion, sought to obtain release of her court records so she could work to reverse the Supreme Court's ruling. She stated that she was opposed to abortion and did not want to join the suit, but permitted the legal aid lawyers to name her as a client because they were helping her obtain custody of her children, who were in foster homes. She told the newspaper that joining in the suit "was the biggest mistake I ever made."

These are examples of legal services attorneys using the poor to promote their own agenda of "social reform." The real needs of these clients were overlooked by legal services attorneys in favor of their own agendas, agendas that do not necessarily benefit the poor. As the above stories indicate, it is not always the "needs" of the poor, as demonstrated by the poor individuals seeking assistance, that determine the priorities and case selection of legal services lawyers.

Redistricting activities are another example of the diversion of money from the provision of basic day-to-day legal assistance to the poor to the partisan political agendas of various legal services lawyers. The Corporation's grantees should not engage in redistricting activities, because these activities affect all citizens, rich and poor alike, and consequently result in a misallocation of resources to non-eligible clients. In addition, there are many other individuals, groups, and organizations that are ready, willing, and able to take on these matters, both because they can earn legal fees from doing so and because they have a direct and immediate interest in the outcomes of these matters. Lastly, redistricting activities are intertwined with impermissible political activity.

The Corporation believes that, as a policy matter, it should concentrate its resources, and those other resources available to legal services providers over which the Corporation has regulatory control, on meeting the basic day-to-day civil legal needs of eligible poor individuals. We simply cannot afford to spend resources on other projects and programs that, at best, do little to move us toward this goal.

Competitive Bidding for Program Funding

In its FY 1989 Appropriations Act for LSC, Congress instructed the Corporation to "develop and implement a system for the competitive award of all grants and contracts." The Corporation welcomes this assignment and assures Congress that it is moving forward in a judicious and timely manner. The competitive awarding of grants and contracts will ensure that those service providers best suited to assisting eligible poor individuals with their day-to-day legal disputes, consistent with our statute and regulations, will be selected.

Currently, neither the Corporation, the Congress, nor the eligible clients can be fully assured that they will receive quality service in the most efficient manner. Without a competitive process that makes room for those offering innovation, we cannot begin to serve more eligible clients. Just as paying clients benefit from attorneys competing for their business, the poor can benefit from attorneys competing to serve them.

The competitive system contemplated in the Corporation's FY 1990 budget request requires more than the right to enter into grant or contractual agreements with selected service providers. It requires that the Corporation have the right to discontinue funding at the termination of the grant or contract period, subject to contractual terms, on the basis of policy changes or for purposes of funding alternative providers in subsequent contract periods.

In the Conference Report to the FY 1989 appropriation bill, the Congress recognized that the provision concerning the competitive award of grants "implicitly modifies section 1011 of the Legal Services Corporation Act, as amended by the seventh and eighth provision" of the pertinent section of the appropriations act. However, a permanent modification of section 1011 of the LSC Act and elimination of current funding restrictions contained in the appropriations act are needed to ensure full and fair competition among service providers. Freedom to end a funding relationship, or, in this case, deny funding to a provider at the end of a contract period, is essential for the establishment of competition in the delivery of legal services to the poor.

The need for these provisions is apparent when one considers the costs associated with defunding a current provider in favor of a provider who successfully competes for the grant. As an example, consider the Corporation's successful denial of funding of the National Social Science and Law Center, a case concluded in June 1988, after 26 months of administrative and judicial proceedings. Enjoying Section 1011 protections, this one "back-up" program cost the Corporation, and ultimately taxpayers and needy clients, over $500,000 in monitoring costs, legal fees, and interim funding resources. In the National Clients' Council case, concluded in June 1986, the Corporation succeeded in denying funding only after 20 months of administrative and judicial proceedings and an estimated financial drain of over $1,165,000.

Accountability

As Chairman Wallace stated in his testimony, the Corporation is requesting that the Congress adopt language, to be included in the Corporation's appropriations bill, that would apply 27 of the Federal antifraud and antiabuse provisions to the Corporation's grant recipients and to their agents and employees. This request is made in order to ensure greater accountability in the use of Federal funds.

At present, the Corporation has limited means through which to ensure accountability. The non-Federal status of the Corporation poses substantial impediments to holding such individuals either civilly or criminally liable for any fraud or abuse committed by the grant recipients and their agents or employees. The Corporation's past experience in dealing with fraudulent and abusive practices amply illustrates the need for the application of these provisions of Federal law.

LSC evaluations of recipients often turn up abuse. One such evaluation revealed a substantial conversion of grant funds to personal, non-program, and unauthorized uses. Although LSC successfully pursued an administrative denial of refunding action against the program, the Corporation also considered the possibility of bringing a civil action, based upon the Federal

False Claims Act, 31 U.S.C. §§3729 et seq., against the responsible individuals (the program's executive director, several employees, and possibly one or more board members).

Review by counsel for the Corporation, however, indicated that the Corporation would be unlikely to prevail in such an action since it is not clear that the civil Federal False Claims Act applies to the conversion of grant funds by a Corporation grantee or its agents or employees. The 1986 amendments to the False Claims Act arguably resolved the problems identified by counsel, but this is not entirely clear. The 1986 amendments also provided for an administrative procedure by which certain Federal departments and establishments may recover against one who makes or submits a false or fraudulent claim; but, as the law now reads, it does not appear that LSC may avail itself of this procedure. Notwithstanding counsel's opinion as to the applicability of the Federal False Claims Act, this case was referred to the Justice Department for possible criminal prosecution.

As a second example, a review of the creation of certain "alternative corporations" by recipients of LSC funds was conducted by the United States General Accounting Office in response to a request by two United States Senators. The GAO concluded that two LSC recipients and their subrecipients maintained such close relationships that LSC should consider them single entities for purposes of compliance with the LSC Act and regulations. After the Corporation investigated this matter, it considered possible action under both the civil and criminal provisions of the False Claims Act, based upon the disposition of fund balances accumulated by certain grantees and fund transfers by certain grantees, and referred the matter to the Justice Department.

As a third example, LSC considered possible civil action against a former grantee because of apparent improprieties in connection with approximately $2.2 million in grant funds awarded to this grantee. This matter was also referred to the Justice Department.

In each of the three cases, however, the Justice Department concluded that the allegations would be difficult to prosecute under the False Claims Act or any other Federal criminal statute. There may, of course, be other reasons why prosecution was declined. It appears, however, that one recurrent problem is that of the Corporation's status as a private, non-governmental entity. It is the Corporation's belief that, if the Congress were to make the Corporation a Federal agency, or at least expressly provide for the applicability of the above-mentioned provisions to LSC grantees and their agents and employees, the problems encountered in attempting to hold the responsible individuals personally accountable for misuse of funds could be alleviated.

Consider LSC's more recent experiences. During its monitoring of a recipient in 1987 and 1988, the Corporation discovered that the recipient's former executive director had used LSC funds to pay for a Master of Business Administration degree from a local university without the knowledge or consent of the program's Board of Directors. In addition, the executive director double-billed legal services programs for numerous expenses and was improperly reimbursed for these expenses. The case has been referred to the Department of Justice and the Corporation has issued Notices of Corrective Action and Questioned Costs covering $140,000 in Federal grant funds.

LSC referred a matter regarding another grantee to the Department of Justice in 1987. Specifically, LSC alleged that the current executive director, and others, prepared false travel vouchers and received payment based on such false information in the amount of $20,000. Recently, however, the Justice Department informed LSC that it was declining to prosecute in the matter. Among the reasons cited for declining criminal prosecution was "the limit on the choice of chargeable criminal violation as a result of 42 U.S.C. Section 2996d(e)(1)." This provision of the United States Code states that the Corporation is not to be considered an instrumentality of the Federal government.

LSC referred a matter regarding another LSC recipient to the Department of Justice in 1986. Specifically, LSC alleged that the former Chairman of the Board of Directors and an employee of the program converted to their own use in excess of $200,000. The Department of Justice also declined criminal prosecution in this case. Recently, however, LSC executed a settlement agreement with the program for $100,000. At this time, the program is assessing the merits of a civil action against the individual(s) involved in connection with the alleged conversion.

In January 1989, LSC referred to the Department of Justice an allegation that the former Executive Director of a Texas program used LSC funds to pay expenses incurred in pursuing a Master in Business Administration degree without the knowledge or consent of the program's Board of Directors. In addition, the Executive Director allegedly double-billed the program for numerous expenses and obtained reimbursement for improperly documented expenses. The total sum at issue is approximately $70,000.

If the Congress were to make the Corporation a Federal agency, or at least expressly provide for the applicability of the aforementioned provisions to LSC grantees, many of the problems encountered in attempting to hold grantees accountable for their misuse of funds (including those mentioned here) would be largely resolved. The possibility of a defunding action against a grantee is, of course, of some deterrence, but it is very expensive and surely not as effective a deterrent as personal liability on the part of the responsible individuals.

The Corporation soon will have additional and centralized investigatory authority under the Inspector General Act Amendments of 1988, Pub. L. 100-504, 102 Stat. 2515 (1988). The Inspector General will lend new visibility and resources to the efforts to identify waste, fraud, and abuse. These efforts may be of little value, however, if the requested provisions are not made applicable to LSC's grantees and their agents and employees. In short, the law enforcement process consists of two components, investigation and prosecution. Without the latter, the first component is of little value.

Mr. Chairman, I am grateful for the opportunity to appear before your Subcommittee and would be pleased to respond to any questions you or the other Members may have.

STATEMENT OF THOMAS F. SMEGAL, JR.

Good morning, Mr. Chairman and members of the subcommittee. My name is Thomas F. Smegal, Jr. I am a partner in the law firm of Townsend and Townsend in San Francisco, and for the past four years I have served on the Board of Directors of the Legal Services Corporation and its Committees on Audit and Appropriations and Operations and Regulations.

I am particularly pleased to have the opportunity to appear before you today because I bring to you a decidedly different point of view than that of either the Chairman of the Board or the Corporation's President. During our concurrent tenure, Mr. Wallace has been a member of and now leads the slim majority of the Board that has sought through various means to undermine the very existence of federally funded legal services to the poor. Like his predecessor Clark Durant, the Chairman has attempted to hobble our grantees through a never-ending series of regulations designed simply to harass them and impair their ability to effectively represent their indigent clients.

He has continually ignored or attempted to thwart the will of this subcommittee and your counterparts in the House. He has treated with disdain leaders of the private bar who have come before us to advocate for increased funding and stronger support for legal services programs. He does not speak for me, Mr. Chairman, nor does he speak for those of my colleagues on the Board who continue to believe that we have an obligation to come before you and advocate as strongly as we know how for adequate funding to provide at least minimum access to justice for our nation's poor.

The President of the Corporation, likewise, is a product of that pencil slim majority, having been hired last summer in a highly unorthodox process to which I strenuously objected. He does not represent the kind of management style or attitude that

I believe the Corporation needs. Let me give you a recent example of his inappropriate behavior. Just last month Mr. Wear traveled to San Francisco where he threatened to sue the Legal Services Trust Fund Commission of the State Bar of California if they did not give in to his demands that they cut off state funding to the National Center for Youth Law. The fact that neither Mr. Wear nor the Legal Services Corporation has any authority whatsoever over the funding decisions of a public agency such as the California Legal Services Trust Fund Commission, did not deter him for one moment from spending the Corporation's money on this totally unwarranted mission. He, also, does not speak for me, Mr. Chairman, nor for my colleagues who believe that our grantees deserve support and encouragement from the Corporation staff, not suspicion and hostility.

I thank you for giving me this opportunity to share with you my own thoughts on the Corporation's budget request for FY 1990. I believe it to be critically important, given the Board majority's recent adoption of still more excessive, disruptive regulatory initiatives, that you continue to exercise rigorous control and extreme vigilance over the actions of this Board. It is my fervent hope that President Bush will soon submit eleven nominees for the LSC Board, dedicated to the proposition of equal justice for all, who will fight for this program that they are sworn to uphold. But until that day, I implore you to continue to watch us; this Board simply does not deserve your trust.

I might add, Mr. Chairman, that when I first began my service on the LSC Board, there were not nearly as many of my colleagues who shared my views as there are today. In the old days many, many votes were 9 to 2. The fact that I am now regularly and consistently joined in my opposition to the unwise and destructive policy initiatives of the majority by four other members of the Board speaks less to the quality of my advocacy than to the outrageous behavior of the majority. Whether it is hiring lobbyists to lobby for a reduction in our budget, going on the 700 Club to urge the President to veto your Subcommittee's entire appropriations bill just to kill legal services, or advocating the outright abolition of the Corporation, the leadership of this Board, and particularly the Chairman's predecessor Mr. Durant, has been a study in excess. If we were not dealing with so serious a matter as the legal rights of the poor, their antics would be hysterical. As it is, the attitudes of the majority of this Board toward the poor and the dedicated lawyers and paralegals who serve them is one of the saddest spectacles I have ever witnessed. The Board majority creates a disservice to the poor of this country who Congress desires to have legal representation.

Let me move now to the budget request you have before you which bears witness to what I have just said. The Corporation's budget request for 1990, adopted by the Board at our December, 1988, meeting, as usual by a vote of 6 to 5, is $295.3 million, a 4.3% decrease from the FY 1989 appropriation of $308.6 million. The six-person majority is not asking for a freeze, Mr. Chairman, as they have during previous years, but a 4.3% decrease from our current appropriation. The request calls for level funding of basic field programs and the elimination of all state and national support centers, the National Clearinghouse for Legal Services, the regional training centers and the computer assisted legal research centers, all essential components of an effective national legal services delivery system for which Congress has specifically earmarked funds for the past four years. Let me speak first to the overall funding level requested.

This budget request is pathetically inadequate for the enormous task at hand. I understand fully the realities of the appropriations process and the severe limitations you face in making decisions for funding various competing priorities. But that is precisely the point -- competing priorities. It is your

We are strongly opposed to the LSC's proposals to eliminate funding for support programs and services. The 16 national support centers are specialized law offices providing assistance to all the local legal services offices in particular areas of the law -- e.g., housing law, consumer law, and legal problems of the elderly. They provide expertise to local offices which those offices cannot replicate. They also provide support to lawyers contributing free legal services; these lawyers are not in a position to fund the centers, and could not effectively provide pro bono services absent their assistance. The support centers are comparable in many ways to the expertise provided in a law firm by a senior partner to a young associate. The suggestion to defund the centers and then permit local programs to buy their services on an ad hoc basis is a recipe for their dismantling. The support centers are valuable and highly effective; their major offense, in fact, may be that they have been too effective in aiding poor clients.

Mr. Whitehurst:

QUESTION: Can you share with the Committee your view on LSC's monitoring efforts? Are they objective? Are they professionally done? Does anything result from them that improves the quality of services offered by the Texas Programs?

RESPONSE: In recent years, the LSC's monitoring emphasis nationally has been admittedly on compliance rather than on quality. I do not mean to minimize the importance of compliance with Congressional mandates or LSC regulations. However, the Corporation's emphasis on compliance has been to the virtual exclusion of efforts to improve the quality of services offered by local field programs.

In responding to questions from Senator Rudman, the LSC has stated that "LSC staff ensured the quality of the official reports and that all conclusions contained therein are factual and based on evidence made available to the monitors." This assertion belies the continued experience of local field programs. Generally, LSC's monitoring reports are superficial, subjective, unprofessional, replete with typographical, spelling and grammatical errors, and characterized by numerous factual inaccuracies. The reports are universally found by programs to be unhelpful in improving the delivery of legal services to poor people.

What I am told about the overall monitoring of Texas programs is most disturbing to me. Monitors generally have little or no experience in the delivery of legal services to the poor and tend to exhibit a predisposition towards finding fault with the programs. In at least one instance, a former employee of the American Farm Bureau was sent to monitor a program providing legal services to migrant farm workers. Such programs receive an inordinate amount of attention from LSC monitors and seem to be targets of some of the most questionable monitoring tactics. (As an example, it is believed that monitors have interviewed opponents in active litigation during their visits.) Another monitor was a retired Interpol agent and a former IRS criminal fraud investigator. And yet another listed on his resume organized crime and narcotics investigations, including overt and covert operations. These are simply not persons qualified to evaluate the quality of legal services being offered to poor Texans.

Monitors have also repeatedly sought information dating as far back as six years and have made oppressively large requests for production of documents. The Houston program, the Gulf Coast Legal Foundation, just last month was required to submit eight boxes of fiscal documents, which, when stacked one on top of the other, were over six feet high. Access to program personnel files continues to be a source of contention between programs and monitors, as are repeated insinuations that program staff members are guilty of wrongdoing.

Of equal or greater concern is the lack of independence and objectivity demonstrated by monitors. It is reported to me from Texas Project Directors that during exit interviews, when monitors summarize the results of their on-site visits, they feel compelled to state that any of the positive findings they have made might be excluded from the final report, the drafting of which is controlled by the Washington office of LSC. In other cases either there have been no exit interviews at all or the interviews have been carefully scripted and controlled from Washington.

Furthermore, what useful comments monitors have made to local program directors often suggest a need for increased efficiency through updated word-processing and/or other equipment. This type of recommendation, which requires an expenditure of program funds to implement, is particularly ironic when contrasted with the annual LSC budget requests to Congress which have continually sought to decrease the amount of funds available for civil legal services to the poor.

I am most familiar with the local legal services program in Austin, the Legal Aid Society of Central Texas (LASCT). This program recently received a draft monitoring report that made just such a finding. I know for a fact that the program would very much like to improve its productivity through increased automation. But, with the exception of a one percent funding increase this year, the program has received no new LSC funds since 1985, in spite of ever-increasing client needs. Furthermore, out of the fifty-four page draft report received by the Austin program, all but 9 pages had some form of error.

Two findings, however, in the Austin program's report are particularly noteworthy. The monitors concluded that "the program was delivering high quality services to eligible clients" and "[t]he program has complied with all 1988 grant assurances." I point out these two findings because in all the testimony that has been presented, both to this body and to members of the House, I have not heard or read one favorable word from the Corporation about the services being provided by its recipients. Since 1984, the Legal Aid Society of Central Texas has been monitored four times and has received three reports. Although all have been generally favorable there would be no way for members of this body to know that based on the presentations made by LSC representatives. Nevertheless, enormous amounts of money are being expended annually on continued monitoring efforts to find fraud, waste and abuse, rather than to promote and improve the quality of legal services provided indigent persons.

SMALL BUSINESS ADMINISTRATION

STATEMENT OF SUSAN ENGELEITER, ADMINISTRATOR

ACCOMPANIED BY:

- **JOHN F. MOFFITT, ASSOCIATE DEPUTY ADMINISTRATOR FOR MANAGEMENT AND ADMINISTRATION**
- **LAWRENCE ROSENBAUM, COMPTROLLER**
- **EDWIN HOLLOWAY, ASSOCIATION ADMINISTRATOR FOR FINANCE AND INVESTMENT**

BIOGRAPHICAL SKETCH

Senator BUMPERS. The subcommittee will now consider the 1990 budget of the Small Business Administration. The total amount requested is $437,202,000, which is a net increase of $18 million over the current level. However, this is somewhat misleading as it includes $39,741,000 from the Department of Commerce to consolidate minority business development activities in the SBA. On a comparable basis to what Congress approved for 1989, the amount requested is actually a decrease of $21,682,000.

The 1990 SBA budget repeats the Reagan administration's line of terminating the direct business and the disaster loans; selling off SBA's loan portfolio; and increased user fees.

It is our pleasure to have the newly confirmed and sworn in Administrator, Susan Engeleiter. As chairman of the Small Business Committee I am acquainted with Ms. Engeleiter, but, for the benefit of the readers of this record, we will insert her biographical sketch for the record.

[The biography follows:]

BIOGRAPHY OF SUSAN S. ENGELEITER

EDUCATION

JURIS DOCTORATE, University of Wisconsin Law School.

B.S. DEGREE in English and Communication Arts, certified to teach English and communications-related courses at the secondary level, University of Wisconsin - Madison.

HIGH SCHOOL DIPLOMA, Brookfield Central High School, Brookfield, Wisconsin.

LEGISLATIVE/POLITICAL INVOLVEMENT

CANDIDATE FOR THE U.S. SENATE - STATE OF WISCONSIN, September 1987 - November 1988.

* Won party nomination in a 58% to 42% primary victory over State Republican Party Chairman Stephen King.

* Lost in general election by a margin of 52% to 48% to Herbert Kohl.

SENATE MINORITY LEADER, Elected to this leadership post in November of 1984 and re-elected in 1986. Served as ASSISTANT MINORITY LEADER from 1982-1984.

* First woman in the history of Wisconsin to hold a major elected leadership post.

* Only woman re-elected to major leadership post in the Wisconsin Legislature.

STATE SENATOR, May 1980 - present, Wisconsin 33rd District, Elected in special election in 1980 and re-elected in 1982 and 1986.

* First Republican woman elected to the Wisconsin State Senate.

* One of three woman in the history of Wisconsin ever to be re-elected to the State Senate.

LEGISLATIVE ASSISTANT TO FORMER WISCONSIN GOVERNOR LEE SHERMAN DREYFUS, January 1979 - March 1980.

STATE REPRESENTATIVE, Wisconsin's 99th District, Elected in 1974 and re-elected in 1976.

* Youngest woman in the country elected to a state legislature when took office in 1975 at the age of 22.

LEGISLATIVE ACTIVITIES - COMMITTEES/COUNCIL

PRESENT: Joint Committee on Legislative Organization
Joint Committee on Employment Relations
Senate Organization Committee
Legislative Council
Senate Rules Committee

PAST: (partial list)
Banking, Business, Economic Development, Education and Transportation Committees
Governor's Welfare Reform Commission
Strategic Development Commission
Legislative Council Special Committee on Mental Health Issues

CIVIC INVOLVEMENT (partial list)

BOARD MEMBER: Aurora Health Care Board of Directors (the holding company for St. Luke's Medical Center and Sinai Samaritan Medical Center in Milwaukee); and former member of the Board of Directors of Tri-County YMCA (Menomonee Falls).

MEMBER: American Association of University Women; Mortar Board Alumni of Milwaukee; Calvary Lutheran Church in Brookfield; Wisconsin Bar Association; American Bar Association; Milwaukee County Zoological Society; Friends of Channel 10/36; Wisconsin Women for Soviet Jewry, organized by the Milwaukee Jewish Federation; Professional Dimensions, a Metropolitan Milwaukee organization of professional women; and the Metropolitan Milwaukee YMCA.

AWARDS (partial list)

GUARDIAN OF SMALL BUSINESS, 1988, from the National Federation of Independent Business.

OUTSTANDING ALUMNA AWARD, 1987, from the Friends and Alumni of the University of Wisconsin Center in Waukesha County.

ONE OF THE 10 BEST REPUBLICAN LEGISLATORS IN THE NATION, 1986, chosen by the National Republican Legislators Association.

WOMEN OF DISTINCTION AWARD, 1986, from the Christoph Memorial YWCA of Waukesha County.

DISTINGUISHED SERVICE AWARD, 1986, from the Wisconsin Association of the Future Farmers of America.

WISCONSIN GIFT OF LIFE CHAIRPERSON, 1986, from the National Kidney Foundation.

COMMUNITY SERVICE AWARD, 1986, from the Alliance for the Mentally Ill of Greater Milwaukee.

GIRL SCOUTS OF WISCONSIN APPRECIATION AWARD, 1986, presented to former Girl Scouts for outstanding achievements.

SALESWOMAN FOR MILWAUKEE IN THE AREA OF GOVERNMENT, 1984, presented by the Sales and Marketing Executives of Milwaukee.

ONE OF THE OUTSTANDING WOMEN IN WISCONSIN HISTORY, 1980, honored by the American Association of University Women (AAUW), one of two elected officials featured in the AAUW Gifted Heritage Book.

PERSONAL INFORMATION

BIRTHDATE AND PLACE: March 18, 1952, in Milwaukee, Wisconsin.

- MARITAL STATUS: Married for 12 years to Gerald H. Engeleiter, Vice-President - The St. Paul Companies, with one daughter, Jennifer Lynn, and one son, Brian Timothy.

OPENING STATEMENT

Senator **Bumpers**. As, I said, we are pleased to welcome the new Administrator to the subcommittee. She has only been in office for about 2 weeks, so I commend her bravery for appearing on such short notice to defend this Reagan-Bush budget request for SBA. In her confirmation hearing, Mrs. Engeleiter told us of the President's strong commitment to small business and to SBA. I hope that commitment will be reflected in some budget amendments which might be submitted for our consideration.

This last Reagan budget for SBA, which Mr. Darman has told us stands until officially modified by the administration, could be called the free lunch budget. The theory behind it is that you can have an agency for small business and it doesn't cost a dime. In this budget, there are no positive outlays. The magicians at OMB have concocted this scheme whereby exorbitant and usurious guaranty fees are charged for loans, plus various prices charged to the public for governmental services so that Congress doesn't have to appropriate a nickel to run the agency for next year. Actually, the fees and charges don't quite cover it; so it is proposed that we sell loans held by SBA and use those proceeds to pay the rent, salaries, and so forth.

This is truly a through the looking glass budget. If SBA can be run at no cost to the taxpayers, then why not all Government agencies? Why do we even need taxes, if Government can be run for nothing? Lewis Carroll couldn't have written a more nonsensical proposal.

I hope the new Administrator recognizes that the existing budget proposal is unrealistic and is simply a product of the intense animosity for SBA which was held by the Reagan OMB. It seems to me that some at OMB never forgave SBA for having survived Mr. Stockman's assaults, and that they want the agency to pay in blood for its survival.

I would remind the subcommittee that SBA exists for three reasons: to help small firms do business with the Government, to help them find assistance with management problems, and to help them find long-term financing. Although we all want to find the most cost-effective means of meeting these needs, there is no free lunch.

Finally, let me put the subcommittee on notice about two pressing issues. First, members are probably aware that the section 7(a) guaranteed loan program has experienced a funding shortage in recent months due to a drastic upsurge in demand. The program has been funded at about $2.4 billion in guaranty authority for about 3 years, and suddenly this is not enough to meet demand from borrowers and lenders. This funding shortage has been addressed in the current year by reprogramming $200 million in unused authority from other programs, and I commend SBA and OMB for having agreed to this resolution.

I would like to see the 7(a) program fully funded at its authorized level of $2.9 billion next year, and I have a preliminary opinion from CBO that this can be done without increasing spending next year. In fact, such an amendment would reduce the deficit by $6 million because of the 2-percent guaranty fee charged to borrowers.

Second, the MESBIC program, minority enterprise small business investment companies, are facing a severe financing crisis in the next year or two. This program has been level funded at $36 million for 3 years, and it is taking on water. There is no room for growth, and many companies need to refinance debentures from the early years of the program. MESBIC's have been perhaps the Government's most successful program for minority business growth, and they have spawned some of the premier minority-owned companies today, such as Essence magazine, various radio and cable companies, and the minority acquisition of McCall Patterns. The MESBIC industry is developing a proposal to convert their program from a direct lending program to a loan guaranty. This would allow for a considerably expanded program level. I hope to hold a hearing on this proposal in the Small Business Committee soon and, if the record bears it out, I may offer this proposal as an amendment to the appropriations bill.

This will be your first appearance here to submit a budget. I must say that while the administration has a right to send amendments down here, and I certainly hope they will, this budget obviously will never see the light of day here. It is what I would describe as a looking glass budget.

There is not one dime of Federal appropriations involved in it. It would be funded totally with user fees, and so on, and that is not our intent. Obviously, if we are going to have a kinder, gentler Nation, if we really are committed to small business, it is going to take more than just a self-sustaining agency which totally eliminates the help for those who simply cannot help themselves.

Ms. Engeleiter, we are pleased to have you with us. Senator Kasten, do you have an opening statement?

REMARKS OF SENATOR KASTEN

Senator KASTEN. Mr. Chairman, I just want to say that precisely 24 hours ago, almost to the minute, I was in the Roosevelt Room and President Bush was administering the oath of office to Ms. Engeleiter at quarter after 11 yesterday, and I agree and I associate myself with your appropriate comments.

I am hopeful that this budget, and a number of other issues that we have seen over the years with the Small Business Administration, is in effect a spot from which we can all start to do some work. I have had the pleasure of working with Susan in a number of different capacities over the years, as you know. I spoke on her behalf, as did Senator Kohl, before your committee.

Susan, this is an indication that a lot of people are in charge of more than one part of your agency. You will end up to having see authorizers and appropriators more than you might have thought before you got involved with this. A lot of the same people end up in some of the same positions.

I just wanted to say that we look forward to working with you, and I hope that we can have a positive, aggressive kind of an approach, including adequate funding for the problems that we are going to be working with in small business.

Senator Bumpers. Thank you, Senator Kasten.

PREPARED STATEMENT

Ms. Engeleiter, your prepared statement will be printed in full in the record and we would be pleased if you would highlight it for us.

[The statement follows:]

STATEMENT OF SUSAN S. ENGELEITER

IT IS AN HONOR TO APPEAR BEFORE YOU AS THE NEW ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION. I AM HERE TODAY TO DISCUSS THE PRESIDENT'S FISCAL YEAR 1990 BUDGET PROPOSALS FOR THE SBA. ACCOMPANYING ME ARE JOHN MOFFITT, OUR ASSOCIATE DEPUTY ADMINISTRATOR FOR MANAGEMENT AND ADMINISTRATION; LAWRENCE ROSENBAUM, OUR COMPTROLLER; AND EDWIN HOLLOWAY, OUR ASSOCIATE ADMINISTRATOR FOR FINANCE AND INVESTMENT.

AS YOU KNOW, MR. CHAIRMAN, I WAS CONFIRMED BY THE SENATE AND SWORN INTO OFFICE LESS THAN TWO WEEKS AGO. IN MY STATEMENT TODAY, I WOULD LIKE TO EXPLAIN THE STEPS I HAVE TAKEN DURING THIS SHORT TIME - AND PLAN TO TAKE IN THE WEEKS AHEAD - IN REGARD TO THE SBA'S FISCAL YEAR 1990 BUDGET.

EARLIER THIS YEAR, THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, RICHARD DARMAN TESTIFIED THAT THIS ADMINISTRATION IS WILLING TO NEGOTIATE ITS BUDGET SUBMISSION WITH CONGRESS. THAT SPIRIT OF NEGOTIATION NOW HAS PRODUCED AN AGREEMENT BETWEEN THE WHITE HOUSE AND THE CONGRESS ON THE BROAD OUTLINES OF THE FISCAL YEAR 1990 BUDGET.

AS TO SPECIFIC BUDGET ITEMS, MR. DARMAN CHARACTERIZED THE ADMINISTRATION'S SUBMISSION AS A "STARTING POINT," AND HE EXTENDED HIS INVITATION TO NEGOTIATE TO AGENCIES THAT WISH TO MODIFY SPECIFIC PROVISIONS OF THEIR BUDGETS TO PROPOSE CHANGES.

SEVERAL WEEKS AGO, THIS PROCESS WORKED VERY WELL IN REGARD TO THE SMALL BUSINESS ADMINISTRATION. THE OFFICE OF MANAGEMENT AND BUDGET, THE SBA AND THE CONGRESS SUCCESSFULLY NEGOTIATED A REPROGRAMMING OF FUNDS TO MEET THIS YEAR'S PROJECTED SHORTFALL IN THE 7(A) GUARANTEE LOAN PROGRAM. I REGARD THAT AGREEMENT AS EVIDENCE THAT WE CAN, INDEED, SOLVE MANY OF THE MOST CONTENTIOUS ISSUES WITHIN THE SBA BUDGET IN A PROCESS OF NEGOTIATION AND COMPROMISE.

THIS WAS THE BUDGETARY BACKDROP AGAINST WHICH I ASSUMED OFFICE ON APRIL 20. ACCORDINGLY, ONE OF MY FIRST OFFICIAL ACTS WAS TO INITIATE A REVIEW OF THE SBA BUDGET PROPOSALS SENT TO YOU IN JANUARY. USING THE PRESIDENT'S SUBMISSION AS A STARTING POINT, I INSTRUCTED MY STAFF TO DEVELOP ALTERNATIVES THAT WOULD BE RESPONSIVE TO THE SMALL BUSINESS COMMUNITY, RECEPTIVE TO CONGRESSIONAL CONCERNS, ACCEPTABLE TO THE PRESIDENT, AND IN HARMONY WITH MY GOALS FOR THE SBA.

I ALSO INSTRUCTED MY STAFF THAT ANY PROPOSED ALTERNATIVES MUST MEET SBA'S RESPONSIBILITY IN REGARD TO THE BUDGET DEFICIT, WHILE AT THE SAME TIME PROTECTING THE HEALTH OF THE AGENCY'S MOST IMPORTANT PROGRAMS.

MY STAFF AND I HAVE NOW DEVELOPED OUR RECOMMENDATIONS ON SEVERAL KEY BUDGET ISSUES, AND I HAVE BEGUN MEETING WITH OMB TO FINALIZE A REVISED 1990 BUDGET FOR SBA. BECAUSE I ASSUMED OFFICE LESS THAN TWO WEEKS AGO, MR. CHAIRMAN, MY DISCUSSIONS WITH OMB ARE STILL UNDERWAY, AND I CANNOT BE SPECIFIC AS YET ABOUT ANY PROPOSALS THAT MAY BE FORTHCOMING. THESE DISCUSSIONS ARE MY TOP PRIORITY, AND I WILL WORK TO CONCLUDE THEM AS PROMPTLY AS POSSIBLE.

IN THE MEANTIME, I CAN SAY THAT ALTHOUGH THE APRIL 14 BUDGET AGREEMENT BETWEEN THE PRESIDENT AND THE CONGRESS PROVIDES FOR ADDITIONAL SPENDING FOR DOMESTIC DISCRETIONARY PROGRAMS, ESSENTIAL ELEMENTS OF THE AGREEMENT ARE THE SALE OF ASSETS AND INCREASES IN USER FEES.

I CAN ALSO TELL YOU IN MORE GENERAL TERMS MY SENSE OF PRIORITIES FOR THE AGENCY. CHAIRMAN BUMPERS WILL RECOGNIZE SOME OF THESE STATEMENTS FROM MY CONFIRMATION HEARING BEFORE HIS COMMITTEE.

FIRST, I HAVE STATED CATEGORICALLY - AND I WILL STATE AGAIN TODAY - THAT THE MISSION AND FUTURE OF THE SMALL BUSINESS ADMINISTRATION ARE VERY IMPORTANT TO THE PRESIDENT AND TO ME. THE REASON IS VERY SIMPLE. SMALL BUSINESSES CREATED TWO OF EVERY THREE NEW JOBS IN THIS NATION DURING THE LAST DECADE. OF THE 10.5 MILLION NEW JOBS CREATED IN OUR ECONOMY BETWEEN 1980 AND 1986, 63.5 PERCENT CAME FROM BUSINESSES WITH FEWER THAN 500 EMPLOYEES.

SMALL BUSINESSES EMPLOY MORE THAN HALF OF ALL WORKING AMERICANS, AND THEY PROVIDE ABOUT TWO-THIRDS OF THE INITIAL JOB TRAINING FOR OUR NEW WORKERS. IF OUR NATION'S ECONOMIC REVITALIZATION IS TO CONTINUE, THEN SMALL BUSINESSES MUST CONTINUE TO WORK THEIR MAGIC. NEW BUSINESSES MUST BE CREATED, AND THEY MUST PROSPER.

THE SBA HAS A VITAL ROLE TO PLAY IN MAKING SURE THAT HAPPENS. THIS RELATIVELY SMALL AGENCY IS THE FEDERAL GOVERNMENT'S PRINCIPAL CHAMPION OF SMALL BUSINESS. IF YOU WILL INDULGE ME FOR A MOMENT, MR. CHAIRMAN, I WOULD LIKE TO CITE A FEW FACTS TO ILLUSTRATE THE WORK AND ENERGY BEHIND THE MATHEMATICS OF OUR BUDGET.

- DURING FISCAL YEAR 1988 ALONE, THE SBA APPROVED MORE THAN 17,000 SMALL BUSINESS LOAN GUARANTEES AND LOANS, WORTH $2.8 BILLION - MOST OF THESE TO BUSINESSES THAT COULD NOT HAVE OBTAINED CREDIT WITHOUT THE AGENCY'S GUARANTEES.

- NEARLY 2,900 BUSINESSES PARTICIPATED IN THE AGENCY'S 8(A) PROGRAM FOR MINORITY CONTRACTING DURING FISCAL YEAR 1988. MORE THAN 3,900 CONTRACTS WERE AWARDED, TOTALING MORE THAN $3 BILLION. THAT'S UP FROM $2.8 BILLION IN CONTRACTS DURING FISCAL YEAR 1987.

- THE AGENCY HELD 10 REGIONAL AND NEARLY 600 "SATELLITE" TRADE FORUMS ACROSS THE NATION IN FISCAL YEAR 1988, REACHING NEARLY 30,000 SMALL

BUSINESS REPRESENTATIVES WITH INFORMATION ABOUT EXPORTING THEIR GOODS AND SERVICES.

- ON BEHALF OF WOMEN-OWNED BUSINESSES, THE SBA'S OFFICE OF WOMEN'S BUSINESS OWNERSHIP NEGOTIATED GOVERNMENT-WIDE PRIME CONTRACT GOALS 7 PERCENT HIGHER THAN THE GOALS FOR FISCAL YEAR 1987.

- THE SBA'S OFFICE OF BUSINESS DEVELOPMENT DISTRIBUTED MORE THAN 3 MILLION COPIES OF INFORMATION PUBLICATIONS TO SMALL BUSINESSES NATIONWIDE DURING FISCAL YEAR 1988. IN ADDITION, SMALL BUSINESS INSTITUTES SPONSORED BY SBA ASSISTED MORE THAN 7,200 FIRMS, WHILE THE SBA'S "SERVICE CORPS OF RETIRED EXECUTIVES" PROGRAM COUNSELED 146,000 ENTREPRENEURS AND TRAINED MORE THAN 100,000 POTENTIAL OR EXISTING BUSINESS OWNERS. SMALL BUSINESS DEVELOPMENT CENTERS COUNSELED 80,000 SMALL BUSINESS OWNERS AND DELIVERED MANAGEMENT TRAINING TO 275,000 SMALL BUSINESSES, WITH INCREASED PARTICIPATION FROM PRIVATE RESOURCES - NOT JUST FEDERAL FUNDING.

THESE STATISTICS MERELY SCRATCH THE SURFACE OF THE SERVICES SBA OFFERS EVERY YEAR TO THE NATION'S 18 MILLION SMALL BUSINESSES AND TO THE MANY ENTREPRENEURS HOPING TO FORM THEIR OWN COMPANIES.

MY HOPE AND MY GOAL, MR. CHAIRMAN, IS TO WORK WITH CONGRESS AND WITHIN THE ADMINISTRATION FOR A SENSIBLE BUDGET THAT BALANCES THE NEED FOR FEDERAL FRUGALITY ON THE ONE HAND AND FOR A CONTINUED STRONG COMMITMENT TO SMALL BUSINESSES ON THE OTHER HAND.

MORE SPECIFICALLY, MY IMMEDIATE GOALS FOR THE AGENCY ARE:

- TO CONTINUE MAXIMUM OUTPUT FROM LIMITED RESOURCES, GIVEN THE CURRENT BUDGET RESTRAINTS.

- TO FIND A WAY TO CONTINUE MEETING DEMAND FOR THE 7(A) LOAN GUARANTEE PROGRAM, WHILE SEEKING TO REDUCE THE COST OF THE PROGRAM;

- TO IMPROVE MANAGEMENT AND PERFORMANCE OF SBA ASSISTANCE TO MINORITY-OWNED BUSINESSES, AND EXPLORE WAYS TO ENCOURAGE THE DEVELOPMENT OF LOANS TO NEW MINORITY-OWNED FIRMS.

- TO EXPLORE WAYS THE SBA CAN ENCOURAGE MORE ECONOMIC DEVELOPMENT IN THOSE RURAL AREAS THAT HAVEN'T SHARED IN THE NATION'S ECONOMIC RECOVERY. FOR EXAMPLE, THE AGENCY WILL BE AN ACTIVE PARTICIPANT IN THE NEW RURAL DEVELOPMENT WORKING GROUP OF THE WHITE HOUSE ECONOMIC POLICY COUNCIL.

- TO HELP WOMEN BUSINESS OWNERS OBTAIN ACCESS TO CAPITAL AND COMPETE SUCCESSFULLY FOR FEDERAL CONTRACTS.

- TO HELP RESOLVE THIS NATION'S TRADE DEFICIT AND OPEN NEW MARKETS FOR AMERICAN ENTREPRENEURS BY INCREASING THE NUMBER OF SMALLER FIRMS INVOLVED IN EXPORTING.

I PLAN TO KEEP IN CLOSE CONTACT WITH THIS COMMITTEE AND THE OTHER SBA OVERSIGHT COMMITTEES IN CONGRESS, MR. CHAIRMAN, TO REMAIN AWARE OF YOUR PRIORITIES AND CONCERNS. I ALSO PLAN TO DEVELOP RELATIONSHIPS WITH THE MAJOR PRIVATE ORGANIZATIONS REPRESENTING THE SMALL BUSINESS COMMUNITY, TO ASSURE THAT THEIR VOICES ARE HEARD WITHIN THE ADMINISTRATION.

I WANT TO THANK YOU, MR. CHAIRMAN, AND DISTINGUISHED MEMBERS OF THIS COMMITTEE FOR ALLOWING ME THIS TIME TO HIGHLIGHT THESE PRIORITIES. THIS CONCLUDES MY FORMAL TESTIMONY ON THE FISCAL YEAR 1990 BUDGET SUBMISSION FOR THE SBA.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.

SBA ADMINISTRATOR'S OPENING REMARKS

Ms. ENGELEITER. Thank you very much, Mr. Chairman and members of the Senate subcommittee. It is an honor to appear before you today as the new Administrator of the Small Business Administration, as Senator Kasten indicated, I was just sworn in 24 hours ago.

I am here today to discuss the President's fiscal year 1990 budget proposals for the SBA. Accompanying me today are John Moffitt, our Associate Deputy Administrator for Management and Administration, Lawrence Rosenbaum, our Comptroller, and Edwin Holloway, our Associate Administrator for Finance and Investment, is on my far right.

As you know, I was confirmed by the Senate and sworn in informally less than 2 weeks ago, and in my statement today, I would like to briefly explain the steps that I have taken during this very short period of time and plan to take in the next couple of weeks in regard to the SBA's fiscal year 1990 budget.

Earlier this year, the Director of the Office of Management and Budget, Richard Darman, testified that this administration is willing to negotiate its budget submission with Congress. That spirit of negotiation has produced an overall agreement between the White House and the Congress on the broad outlines of the fiscal year 1990 budget.

As to specific budget items, Mr. Darman characterized the administration's submission as a starting point, and he extended his invitation to negotiate with agencies such as SBA that wish to modify specific provisions of their budgets and ask them to propose various changes.

Several weeks ago, this process worked very well in regard to the Small Business Administration. The Office of Management and Budget, the SBA, and Congress successfully negotiated a reprogramming of funds to meet the year's projected shortfall in the 7(a) guaranteed loan program. I regard that agreement as evidence that we can, indeed, solve many of the more contentious issues within the SBA budget through a process of negotiation and compromise.

This was the backdrop against which I assumed office on April 20. Accordingly, one of my first official acts was to initiate a review of the SBA proposals sent to you in January. Using the President's submission as a starting point, I instructed my staff to develop alternatives that would be responsive to small business, receptive to congressional concerns, and acceptable to the President and in harmony with my goals for the SBA.

I also instructed my staff that any proposed alternatives must meet SBA's responsibility in regard to the budget deficit while at the same time protecting the health of the agency's most important programs. My staff and I have now developed our recommendations on several key budget issues, and I have begun meeting with OMB to finalize a revised 1990 budget for SBA.

Because I assumed office less than 2 weeks ago, Mr. Chairman, my discussions with OMB are still underway. I cannot be specific as yet about any proposals that we may have forthcoming. These discussions, however, are my top priority, and I will work very hard to conclude them very promptly.

In the meantime, I can say that although the April 14 budget agreement between the President and the Congress provides for additional spending for domestic discretionary programs such as SBA's, essential elements to the agreement are the sale of assets and increases in user fees.

SBA ADMINISTRATOR'S PRIORITIES

I can also tell you in more general terms my sense of priorities for the agency, and Chairman Bumpers will recognize some of these statements from my confirmation hearing before this committee. First I have stated categorically, and I will state again today, that the mission and the future of the Small Business Administration are very important to the President and to me.

The reason is very simple: Small businesses created two out of three new jobs in this country during the last 10 years.

If our Nation's economic revitalization is to continue, small businesses must prosper, and the SBA has a vital role to play in making sure that that happens. This relatively small Federal agency has been the principal champion of small business in the Federal Government. If you would indulge me for just a minute, Mr. Chairman, I would like to cite just a few facts to illustrate the work and energy behind the mathematics of our budget.

During fiscal year 1988 alone, the SBA approved more than 17,000 small business loan guarantees worth $2.8 billion, most of these to businesses that could not have obtained credit without the agency's guarantees.

Nearly 2,900 businesses participated in the agency 8(a) program for minority contractors during fiscal year 1988. More than 3,900 contracts were awarded totaling more than $3 billion, and that is up from $2.8 billion in contracts during fiscal year 1987.

The SBA's Office of Business Development distributed more than 3 million copies of information publications to small businesses nationwide during fiscal year 1988. In addition, small business institutes sponsored by the SBA assisted more than 7,200 firms, while the SBA's Service Corps of Retired Executives Program counseled more than 146,000 entrepreneurs and trained more than 100,000 potential or existing business owners.

Small business development centers counseled over 80,000 small business owners and delivered management training to 275,000 small businesses, with a significantly increased participation from private resources, not just Federal funding.

These statistics merely scratch the surface of the services SBA offers every year to the Nation's 18 million small businesses and to the many entrepreneurs hoping to form their own companies. My hope and my goal, Mr. Chairman and Senators Kasten and Stevens, is to work with Congress and within the administration for a sensible budget that balances the need for Federal frugality and the need for continued strong commitment to small business.

SBA ADMINISTRATOR'S GOALS FOR SBA

More specifically, my immediate goals for the agency are:

To continue maximum output from limited resources given the current budget constraints;

To find a way to continue to meet the demand for the 7(a) loan guarantee program while seeking to reduce the overall cost to the program;

To improve management and performance of SBA assistance to minority-owned businesses and explore ways to encourage the development of loans to new minority-owned firms.

My first directive to the field in this regard was to deal with the backlog of 8(a) applications that we presently have at the SBA. I have ordered the field, beginning on May 4, to take care of all the backlog of the 8(a) applications that we now have in preparation for the new 8(a) procedures.

I hope to explore ways the SBA can encourage more economic development in those rural areas that haven't shared the Nation's economic recovery and to help women business owners obtain access to capital and compete successfully for Federal contracts; also, to help resolve this Nation's trade deficit and open new markets for American entrepreneuers by increasing the number of smaller firms that are involved in exporting.

I plan to keep in close contact with this committee and the other oversight committees in Congress to remain aware of your priorities and your concerns. I also plan to develop relationships with the major private organizations representing the small business community to assure that their voices are heard within the administration.

I want to thank you for allowing me to highlight these priorities, and this concludes my formal testimony on the fiscal year 1990 budget submission for the SBA, and I would be more than happy to answer any questions that you have.

MINORITY BUSINESS DEVELOPMENT AGENCY

Senator **Bumpers**. Thank you very much, Ms. Engeleiter.

My first question deals with the MBDA. Secretary Mosbacher was here the other day, and he said that it is going to stay in Commerce, and yet your budget assumptions are that it is going to come under SBA. Who is right?

Ms. **Engeleiter**. Secretary Mosbacher. [Laughter.]

He was here on April 14, I believe, and stated that the administration's plan is to have that program stay within Commerce, and that is the position of the administration.

Senator **Bumpers**. Well, how is SBA going to provide technical management assistance and services to the economically disadvantaged under the 7(j) program?

Ms. **Engeleiter**. That is a good question. Originally, as you know, when the program was moving over to Commerce, it was felt there was duplication between the 7(j) program that is in the SBA and a similar program that is in Commerce. I believe there is not yet an official position as to what will happen with the 7(j) program, but that certainly will need to be addressed in the coming weeks in further budget negotiations if the MBDA is staying in Commerce.

SMALL BUSINESS DEVELOPMENT CENTERS

Senator BUMPERS. You talked about compromise and amendments and working with the administration on this budget and so on. I am not just red hot to spend Federal money, but this budget, as you know, is self-sustaining. You anticipate here that you are going to take in enough money to run the agency. If we are going to do that, we might as well just farm it out to somebody and say:

> Here it is. We are licensing you as a private corporation or as a Government corporation to administer this thing. You take in the user fees and you do all the rest of it, and just stay within whatever you take in.

It was not hard for me. George Bush has said that he is committed to the Small Business Administration and he is committed to helping small business. But there is no trick to being committed to small businesses and the Small Business Administration if it doesn't cost anything.

I think I could get Jesse Helms to be a strong supporter of it that way. [Laughter.]

Ms. ENGELEITER. I am not exactly clear what your question is, Mr. Chairman.

Senator BUMPERS. In order to do that, though, you are proposing to eliminate totally the minority program; you are proposing to eliminate the direct loan program; and I think the handicapped program is also proposed to be eliminated. One of your home staters who used to chair the Small Business Committee, Senator Nelson, was the guy who set up the small business development program. The University of Wisconsin got the very first one. That is the only perquisite to being chairman of the Small Business Committee—you get to have one of everything in your home state.

Senator KASTEN. And it is still there, it is still there.

Senator BUMPERS. It is not going to be for long, Senator Kasten, if this budget is approved.

Did you request or do you know whether your predecessor requested OMB to suggest that we eliminate SBDC's?

Ms. ENGELEITER. I don't know that.

Mr. ROSENBAUM. SBA's request to OMB was to phase out the Federal funding to the SBDC over a 2- to 5-year period and have the SBDC's sustain themselves from State source funding.

USER FEES

Senator BUMPERS. There is one user fee there. When we have that program for the college students, undergrads, senior grads in the Small Business Institute. You are going to charge them $100 for their services. How many small businesses do you think are going to pay $100 for some college kid to come out and consult them? I mean, the answer to that is obvious.

Maybe the program ought to be torpedoed, I don't know, but it doesn't make any sense to put a $100 fee on this, because that effectively torpedoes it.

Ms. ENGELEITER. Mr. Chairman, as I said in my remarks, I believe that Richard Darman has indicated that the entire budget is open to discussion, and there has been good dialog between SBA and OMB.

I would point out to you that there are several areas that are most troublesome to you and other Members of the Congress and in the small business community. I am reviewing these areas and trying to work out some alternatives.

Senator STEVENS. Could you yield right there?

Senator BUMPERS. Yes.

ALTERNATE PROGRAM APPROACHES

Senator STEVENS. The Reagan budget requests deleting the $50 million for disaster assistance and transferring it to FEMA. Have you reviewed that yet?

Ms. ENGELEITER. Yes; the disaster loan program is one of a couple of major areas that I am in the process of trying to work out alternative approaches within the administration. The disaster loan program is one; the SBDC program is another. Two-thirds of all of our training that is provided through small businesses is done through the SBDC's.

On the other hand, we are finding that private contributions to that program are very significant. The States are required to make a 1-to-1 match, and many of them now have a 1½ match from the private sector to 1 percent from the Government.

So that is another major area that we are looking at. The 7(a) loan program, the increase in the guaranteed fee from 2 to 5 percent is one that we are looking into and is somewhat troublesome and would be, in my opinion, rather damaging to the 7(a) program.

There is also, in regard to the 7(a) guarantee loan program, the issue of the potential shortfall. As I indicated in my formal remarks, I believe that the cooperation that existed earlier this year in dealing with the shortfall that we had for this fiscal year, bodes very well for our ability to solve that problem in the next fiscal year.

FISCAL YEAR 1990 SHORTFALL AND USER FEES

We are anticipating anywhere from a $400 to a $600 million shortfall in the next fiscal year. This is another item of discussion.

Certainly, Senator, regarding user fees, I do not have a philosophical problem with user fees in the noncredit area as long as they are not excessive. I believe the best way to handle that is to sit down and discuss those user fees and find out which ones you think are the most troublesome.

Senator BUMPERS. I am not opposed to user fees either, Susan, but I am concerned when it is combined with the total elimination of every single dime that the Government has been putting into some of these programs.

DEFAULTS ON LOANS

For example, I am troubled by the default rate in the direct loan program, and I am curious as to why it is almost twice as high as the guaranteed loan program.

Does that just mean the SBA is a lousier lender than the private sector is or do banks do a better job of checking these people out?

Ms. Engeleiter. I might defer that, but let me say first that the direct loan program is only 3 percent of our total loans.

Senator Bumpers. I know, but you have a 13.7-percent default rate.

Ms. Engeleiter. Let me ask Edwin Holloway to comment on that.

Mr. Holloway. Mr. Chairman, if I may respond. If funds are available in the private sector, the borrowers do not come to SBA, they go to the banks. Then, once they get to SBA——

Senator Bumpers. In other words, if you think it is a pretty good loan, the banks will make it.

Mr. Holloway. The banks will make it in many cases without the SBA. If the funds are not otherwise available, if they come to us, we try to accommodate them first through the guarantee programs. If the guarantee programs can accommodate their needs, then that is where they get accommodated.

If that does not work, then the last thing that is considered is the direct loan, so it would be anticipated that your direct loan default rate could be higher than your guaranteed loan default rate, since they are adversely selected in the first instance.

PORTFOLIO SALES

Senator Bumpers. Let me just make one other statement, and then I will turn it over to my colleague here. We will probably hold a hearing in the Small Business Committee on the advisability of selling these portfolios. You know, we have steadfastly resisted that. To sell a portfolio, for example, that costs $100 million in 1989, to sell that for 70 percent of face value in 1990 makes absolutely no sense.

I don't know who SBA's financial adviser is, but I can tell you that the Small Business Committee is probably going to take the same action, and Congress is going to take the same action we have taken in the past. We are not going to sell those portfolios because it is a terrible loss of the taxpayers' money, and with that, I will defer to Senator Kasten.

7(a) GUARANTEE BUSINESS LOANS

Senator Kasten. Mr. Chairman, thank you.

You mentioned a number of things that I was going to mention. I have got two or three questions but first, the shortfall, according to my notes, you are $168 million less than last year's program in the 7(a) guarantee business loan program.

That is not being addressed in this reprogramming, is it? It is the 8(a) program that is coming out, isn't it?

Ms. Engeleiter. In this fiscal year?

Senator Kasten. Yes; the shortfall on 7(a) guaranteed business loans, is that——

Ms. Engeleiter. That was part of the reprogramming.

Senator Kasten. That has been addressed?

Ms. Engeleiter. That has been addressed.

Senator Kasten. I have one other question on the 7(a) program, and you brought it up in your kind of list of things that are still to be negotiated. Is the idea, and maybe you can't answer this question, but was the idea of increasing the fee from 2 to 5 percent in order to reduce the demand for 7(a) loans, or was the idea of increasing the fee simply to be able to pay for more programs of the Small Business Administration?

I mean, you are not opposed to the 7(a) loan program. That is not indicated, is it, by going from 2 to 5 percent? Do you want fewer people to use it?

Ms. ENGELEITER. In raising the fee from 2 to 5 percent, our estimate is that we will see a real falloff in the number of small businesses that will avail themselves of 7(a) loans, that it will be very detrimental to the program. We feel it would raise about $45 million in new revenue, but there will be a dropoff in the number of people who will be applying.

So it is detrimental. There have been a lot of complaints about the increase from 2 to 5 percent, and so hopefully, that can be reworked.

Senator KASTEN. That is the next step; you just about took it for me. What you are doing is setting up businesses who become taxpayers who, in fact, increase revenues to the Government. Now, if we shut this program down by increasing the loan to 5 percent so fewer people will participate, the capital formation problems of small businesses will be increased. We are going to have fewer opportunities for people to get started and many of those people that have gotten started, I guess the head of the list would be Cray Research, have been super successful.

I think, the increase in the loan origination fee from 2 to 5 percent would be a loser——

Senator BUMPERS. Counterproductive, absolutely.

Senator KASTEN [continuing]. For the Federal budget, and I think that is the position we ought to argue, notwithstanding the fact that within your little Department you concede that you would pick up, what did you say, $45 million?

Ms. ENGELEITER. Yes; but it doesn't take into consideration the people.

Senator KASTEN. You would lose all that other activity.

Ms. ENGELEITER. Yes.

Senator KASTEN. I think it is a bad idea, and I think it is a bad trade, and I am hopeful that we will be able to work with you to change that.

Ms. ENGELEITER. So am I.

ADDITIONAL COMMITTEE QUESTIONS

Senator BUMPERS. Ms. Engeleiter, we have back-to-back votes coming up. I have a few questions that I will submit in writing and request that you get the responses back to us as quickly as you can. We will be holding hearings over on the Small Business Committee on these user fees and on the value of those public portfolios that we are proposing to sell.

I am going to postpone those hearings until I hear from you, though, because if you are negotiating with the administration right now, I would like to get as many answers as we possibly can about how successful you have been. So I will submit my questions for the record, and certainly, the other members of the committee will have the same right.

[The following questions were not asked at the hearing, but were submitted to the administration for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

SMALL BUSINESS DEVELOPMENT CENTERS

Question:

Recently I had the opportunity to visit the Frank L. Reddey Small Business Development Center on the campus of the University of South Carolina. They are doing a great job down there. Ms. Engeleiter, I also recall that Senator Gaylord Nelson of your home state of Wisconsin put the SBDC program together. The very first one was established at the University of Wisconsin at Madison.

The budget again proposes zero for the SBDCs. Was that SBA's request to OMB, and if so, why?

Answer:

The OMB requested level for SBDC was consistent with the then present Administration policy outlined in the June mid-session review, which strongly supported the gradual phase-out of Federal support over the next few years. We requested a program level of $42.6 million for SBDC's in FY 1990. In addition, we also requested that the total program limitation be reduced to $45 million from the $65 million stated in Section 21(a)(2) of the Small Business Act.

However, we now feel that in these times of Federal restraints, it is desirable to eliminate lower priority Federal expenditures. The SBDC program was established as seed money to help start the creation of training centers for small business owners using the academic community.

The program was never intended as a permanent subsidy. The originally intended 1:1 industry matching ratio has grown. This program has been a huge success with a strong private sector commitment, and therefore, is likely to continue to be successful in the absence of Federal funding.

Question:

Ms. Engeleiter, are you familiar with the SBDC Program and what is your personal opinion of continuing Federal funding to them?

Answer:

The Small Business Development Center (SBDC) program was designed to provide comprehensive management and technical assistance to small business owner/managers by combining university resources with Federal, State and local government and private sector resources.

These centers are currently located in 46 states, Puerto Rico, the Virgin Islands and the District of Columbia, and have a network of subcenters of more than 500. Based on the current average matching of private sector funds to Federal funds, the elimination of Federal funding to the program is not expected to have a significant impact on the operation of these centers.

In addition to private sector funds, several SBDC's are sponsored by their state governments, providing reasonable models of how a totally state funded SBDC would work. It is felt that this very successful program has many sources of funding through State and local government and the private sector.

Question:

Please supply for the record a listing of the SBDCs showing their total budget for FY 1988 and the amount that SBA supplied?

Answer:

Attachment I reflects the total SBDC budget for FY 1988 and identifies the SBA funding.

ATTACHMENT I

May 5, 1989
(Revised May 23, 1989)

SBDC TOTAL BUDGET FOR FY 1988

	SBDC	FEDERAL FUNDING	SBDC MATCH	TOTAL FUNDING
1.	Alabama	$ 1,098,500*	$ 1,098,500	$ 2,197,000
2.	Alaska	200,000*	249,035	449,035
3.	Arizona	250,000	305,797	555,797
4.	Arkansas	643,500*	674,802	1,318,302
5.	Colorado	350,000	360,311	710,311
6.	Connecticut	528,208	528,208	1,056,416
7.	Delaware	168,882	172,882	341,764
8.	D.C.	745,108	1,149,569	1,894,677
9.	Florida	2,657,153	3,657,679	6,314,832
10.	Georgia	1,540,500*	1,540,500	3,081,000
11	Idaho	266,500*	305,654	572,154
12.	Illinois	1,700,236	1,709,822	3,410,058
13.	Indiana	581,458	620,710	1,202,168
14.	Iowa	825,000	1,358,147	2,183,147
15.	Kansas	669,500*	795,643	1,465,143
16.	Kentucky	1,033,500*	1,121,712	2,155,212
17.	Louisiana	899,208	1,117,451	2,016,659
18.	Maine	318,500*	902,956	1,221,456
19.	Maryland	300,000	319,696	619,696
20.	Massachusetts	1,488,382	1,488,382	2,976,764
21.	Michigan	2,272,034	2,838,775	5,110,809
22.	Minnesota	1,150,000	1,257,775	2,407,775
23.	Mississippi	648,355	888,934	1,603,934
24.	Missouri	701,074	750,000	1,451,074
25.	Montana	185,017	185,018	370,035
26.	Nebraska	442,000*	584,946	1,026,946
27.	Nevada	227,500*	243,936	471,436
28.	New Hampshire	260,000*	309,055	569,055
29.	New Jersey	858,710	814,332	1,673,042
30.	NY (Downstate)	798,822	1,214,562	2,013,384
31.	NY (Upstate)	834,000	2,140,229	2,974,229
32.	North Carolina	474,655	474,656	949,311
33.	North Dakota	199,915	260,539	460,454
34.	Ohio	785,733	1,279,760	2,063,493
35.	Oklahoma	646,443	707,217	1,353,660
36.	Oregon	741,000*	741,000	1,482,000
37.	Pennsylvania	3,148,731	3,148,731	6,297,462
38.	Puerto Rico	406,000	575,684	981,684
39.	Rhode Island	266,500*	340,592	607,092
40.	South Carolina	824,000	824,000	1,648,000
41.	South Dakota	200,000*	205,662	405,662
42.	Tennessee	784,378	996,938	1,781,316
43.	Texas (Dallas)	744,503	831,878	1,576,381
44.	Texas (Houston)	1,053,426	1,153,682	2,207,108
45.	Texas (Lubbock)	19,736 1/	446,060	465,796
46.	Texas (San Ant.)	396,484	411,735	808,219
47.	Utah	409,464	688,542	1,098,006

SBDC	FEDERAL FUNDING	SBDC MATCH	TOTAL FUNDING
48. Vermont	$ 200,000*	$ 200,000	$ 400,000
49. Virgin Islands	159,532	166,383	325,915
50. Washington	1,170,000*	1,173,498	2,343,498
51. West Virginia	552,000	695,065	1,247,065
52. Wisconsin	1,326,000*	1,326,000	2,652,000
53. Wyoming	186,731	424,101	610,832
	$ 39,336,878	$ 47,776,741	$ 87,178,264
OSR Travel and Clearinghouse	350,000		
	$ 39,686,878		

Authorized funding level for FY 1988 was $40,000,000.

* SBDCs which have reached their statutory limitation.

1/ Funded for the period 9/15/87 through 9/30/88 from FY 1987 funds, will be refunded on 10/1/88. SBDC received only a supplemental of $19,736 from FY 1988 funds.

Question:

Does President Bush know that this zero budget discontinues funding of four SBDCs in Texas?

Answer:

The Bush Administration is aware of the locations of the SBDC's and supports this proposed initiative.

RELOCATION OF SBA

Question:

Why is SBA contemplating a move from the 1441 L Street location that it has occupied since May 1967?

Answer:

The SBA Central Office is now in an eighteen-month extension on its original lease, which has expired. In accordance with the Competition-in-Contracting Act, the contract for the lease must be advertised and bids received from all prospective contractors. SBA has requested a consolidated location due to the fact that growth has outstripped the current space assignment. Twenty-three percent of the office space assigned to the Agency in Washington, DC is currently housed outside of the 1441 L Street facility. The Office of Hearings and Appeals and portions of the Offices of Advocacy, Finance and Investment, the Inspector General, and Information Resources Management, approximately 171 personnel, are located elsewhere.

Question:

How much rent has GSA paid to the landlord of 1441 L Street since SBA occupied the building?

Answer:

According to GSA they will have paid $26,441,288 through the end of FY 1990.

Question:

How much rent has SBA paid to GSA since the standard level user charges were implemented for this location?

Answer:

The SBA has paid $21,435,928 in standard level user charges (SLUC)/rental payments to GSA since FY 1983.

Question:

How much does GSA think the 1441 L Street location is worth as it appears that we have paid for it several times over?

Answer:

The property sold for $27 million to the 9&D Venture group in 1987.

MINORITY BUSINESS DEVELOPMENT

Question:

SBA's justifications include the transfer of the Minority Business Development Agency to the SBA. The justifications state that "This proposal has been well thought out and discussed between both the SBA and MBDA."

When Secretary Mosbacher appeared before the committee he testified that he and President Bush agree that MBDA should stay in Commerce. Is that SBA's understanding?

Answer:

Yes, we have been informed of the Administration's agreement to currently have MBDA remain within the Department of Commerce. Therefore, our original proposal in this area is withdrawn for FY 1990.

Question:

Since the budget assumed that the programs would be merged, SBA eliminated the 7(j) program. With MBDA remaining in Commerce, how will SBA provide technical or management assistance to the socially and/or economically disadvantaged firms the 7(j) program serves?

Answer:

The initiative to transfer the MBDA from Commerce to SBA has been proposed in the two previous years budgets. Each year we provided for the transfer of the MBDA grant and either greatly reduced or eliminated the 7(j) program funding. As you are aware, the transfer never occurred and the 7(j) program received funding both years.

Based on the Administration's agreement to have MBDA remain with Commerce and discussions with OMB, SBA is optimistic that the 7(j) program will continue to receive funding at current actual levels of usage.

LOAN ASSETS SALES

Question:

In 1990 SBA plans to sell the $73,000,000 in direct loans made in 1989 for $51,000,000, or for only 70 percent of their face value. Similarly, SBA plans to sell off $226,000,000 of disaster loans for $131,000,000 for a return of 58 percent. I understand SBA has been employing a financial advisor for the last two years to analyze the marketability of the loans.

Why are the direct loans that are less than a year old only worth 70 percent of the face value?

Answer:

The "return on sales" figures that were included in the budget are estimates based on summary analyses of SBA's portfolios done by Paine Webber in 1987. Prior to any actual sale, SBA would bring a financial advisor on-board to accurately determine "rates of return" and marketing strategies to maximize any revenues from sales of loans.

Question:

Who is SBA's financial advisor, how much has been paid and from what fund?

Answer:

We have an outstanding retainer with the firm of Paine Webber. That firm provided assistance to us in 1987 in order for us to conduct the disaster unsecured home loan prepayment. The by product of this assistance was a "summary" analysis of SBA's portfolio. The charge to SBA for these efforts was $190,000, paid for out of our Disaster Loan Fund.

Question:

If the best your advisor thinks you can get is 70 percent on loans you are not making, did you think of having him look at your loans before you made them with a view to improving their marketability?

Answer:

No, SBA's legislative mandate is to enhance the availability of intermediate and longer-term financing to small businesses, not to make loans which are more marketable to investors.

Also, the 70 cents on the dollar was a figure extracted from the 1987 "Summary" analysis of SBA's portfolio done by Paine-Webber. Prior to any actual sale, we would conduct more thorough analyses of the portfolios to determine the most effective mix and marketability to maximize the return.

DISASTER LOANS

Question:

The budget also proposes the termination of disaster loans. Apparently the search for a kinder and gentler nation does not reach to those wiped out by natural disasters.

SBA says that this program should be eliminated because it is highly subsidized. Instead of proposed elimination, why not eliminate the subsidies?

Answer:

Elimination of subsidies has been recommended by the Administration in prior budget submissions, but not accepted by Congress. The current proposal leaves the decision for risk-taking to the individual homeowner or business. It is their choice to obtain insurance coverage or not. In any case, there are other sources for assistance in the event of a disaster. Generally, states and local governments have assistance programs and private-sector lending institutions also extend personal credit. It is felt that these sources are sufficient to address the needs of disaster victims.

Question:

How many of the people assisted by this program do you really think would be motivated to take out insurance?

Answer:

We can not estimate the number of people who would be motivated to take out insurance. That decision would depend on the individual facts and circumstances of each case including the degree of risk the individual is willing to accept in any given situation.

Question:

What is the estimated unobligated balance of the Disaster Loan Fund on September 30, 1989?

Answer:

The unobligated balance of the Disaster Loan Fund on September 30, 1989 is estimated to be about $920 million. This assumes a loan level in FY 1989 of over $300 million. In the event that we don't extend that level of loan assistance, the balance will rise accordingly.

Question:

How much in repayments and interest is expected to be realized by the fund in Fiscal 1990?

Answer:

We currently estimate that the Disaster Loan Fund will generate $380 million in loan repayments and $133 million in interest income during FY 1990.

Question:

Would the unobligated balance plus the revenues be sufficient to fund the average loan levels of the last 3 years?

Answer:

Yes, as stated earlier, the estimated unobligated balance for the Disaster Loan Fund on September 30, 1989 is about $920 million. In addition, the estimated revenues amount to $576 million. These amounts would more than sufficiently fund the loan levels of the last 3 years, which average approximately $323 million.

Question:

Please list for the record the disasters declared in FY 1988 and FY 1989 to date, showing the number and amount of the loans approved to date for each one.

Answer:

Attachment II lists the disasters declared in FY 1988 and 1989 to date. This list shows the number and amount of loans approved to date.

ATTACHMENT II

FISCAL YEAR ' 88 - DISASTER DECLARATIONS

	EFFECTIVE DATE	STATE		PHYSICAL DECLARATION NUMBER	ECONOMIC INJURY NUMBER	PHYSICAL TERMINATION DATE	ECONOMIC INJURY TERMINATION DATE	Extended as Result of PL 100-590 (P=Physical) (EI=EIDL)	Loan Approvals through May 3, 1989			
									Number of Loans		Amount of Loans	
									Physical	EIDL	Physical	EIDL
1.	10-02-87	Pennsylvania	(S)		6561 01		05-30-88					
2.	10-02-87	Michigan	(S)		6562 01		05-30-88					
3.	10-07-87	Virginia	(S)		6563 01		05-30-88					
4.	10-07-87	North Dakota	(S)		6564 01		06-02-88			1		99,900
5.	10-08-87	Texas			6565 00		07-08-88			10		344,600
6.	10-09-87	California	(P)	2292 02**	6566 00	12-07-87	07-07-88		8,512	18	167,376,310	777,000
7.	10-23-87	New York		2293 06	6567 00	12-22-87	07-25-88		10		99,310	
8.	10-30-87	New York	(S)		6568 01		06-16-88					
9.	10-30-87	New York	(S)		6569 01		06-23-88					
10.	10-30-87	New York	(S)		6570 01		06-16-88					
11.	11-13-87	Northern Marianas		2294 06	6571 00	01-14-88	08-15-88		31		235,700	
12.	11-20-87	Nebraska	(S)		6572 01		07-05-88					
13.	11-23-87	New York			6573 00		08-23-88			1		93,600
14.	11-24-87	Texas	(P)	2295 12	6574 00	01-21-88	08-22-88		68	2	1,845,700	373,200
15.	12-02-87	Micronesia	(P)	2296 06	6575 00	01-25-88	08-25-88		52		991,700	
16.	12-02-87	Louisiana	(P)	2297 12	6576 00	01-29-88	08-30-88		119		2,150,600	
17.	12-03-87	Texas	(S)		6577 01		07-11-88					
18.	12-07-87	Arkansas	(S)		6578 01		07-11-88					
19.	12-09-87	New York			6579 00		09-09-88					
20.	12-10-87	North Dakota	(S)		6581 01		08-02-88			3		195,000
21.	12-11-87	Mississippi		2298 12	6580 00	02-09-88	09-12-88		17		334,300	
22.	12-16-87	Pennsylvania		2299 05	6582 00	02-15-88	09-16-88		10		700,800	
23.	12-21-87	Arkansas	(P)	2300 12	6583 00	02-16-88	09-19-88		36	1	2,352,200	55,000
24.	12-21-87	Puerto Rico	(P)	2301 06	6584 00	02-16-88	09-19-88		783		5,096,500	
25.	12-30-87	Michigan	(S)		6585 01		08-08-88					
26.	12-30-87	New York	(S)		6586 01		08-09-88					
27.	01-04-88	North Carolina (Red Tide)			6587 00		10-04-88	EI 05-31-89*		51		806,800
28.	01-04-88	Tennessee		2302 06	6588 00	03-03-88	10-04-88		152		2,696,400	
29.	01-05-88	Arkansas	(P)	2303 06	6589 00	03-03-88	10-03-88		100		1,051,910	
30.	01-05-88	Ohio	(S)		6590 01		08-15-88					
31.	01-05-88	Oregon	(S)		6591 01		08-22-88					
32.	01-06-88	Pennsylvania		2304 05	6592 00	03-07-88	10-06-88		11		770,500	
33.	01-06-88	Oklahoma	(S)		6593 00		08-29-88					
34.	01-14-88	Hawaii	(P)	2305 06	6594 00	03-10-88	10-11-88		663		12,680,000	
35.	01-14-88	South Dakota		2306 05	6595 00	03-14-88	10-14-88		5		793,600	
36.	01-19-88	Utah	(S)		6596 01		09-05-88					
37.	01-19-88	Kentucky	(S)		6597 01		09-07-88			1		96,300
38.	01-20-88	Marshall Islands	(P)	2307 06	6598 00	03-18-88	10-17-88		62		531,500	
39.	01-26-88	Guam	(P)	2308 06	6599 00	03-21-88	10-20-88		144		1,893,510	
40.	01-26-88	Northern Marianas	(P)	2309 06	6600 00	03-21-88	10-20-88		105		1,722,700	
41	01-29-88	North Dakota	(S)		6601 01		09-22-88					
42.	02-01-88	Alabama		2310 12	6602 00	04-01-88	11-01-88		9		403,000	
43.	02-08-88	New Jersey		2311 05	6603 00	04-08-88	11-08-88		50		651,800	
44.	02-09-88	Minnesota	(S)		6604 01		09-27-88					
45.	02-02-88	Texas	(S)		6605 01		10-03-88	EI 04-30-89				
46.	02-05-88	Texas	(S)		6606 01		10-05-88	EI 04-30-89				

47.	02-16-88	Kansas	(S)		6607 01		10-17-88	EI 04-30-89				
48.	02-23-88	South Carolina	(S)		6608 01		10-24-88	EI 04-30-89				
49.	02-29-88	Alabama	(S)		6609 01		10-24-88	EI 04-30-89				
50.	03-02-88	Mississippi	(S)		6610 01		11-02-88	EI 04-30-89				
51.	03-08-88	Texas	(S)		6611 01		11-08-88	EI 04-30-89				
52.	03-21-88	New York			6612 00		12-21-88	EI 05-31-89*				
		Connecticut (C)			6693 00			EI 05-31-89*				
		New Jersey (C)			6694 00			EI 05-31-89*				
53.	03-16-88	Idaho	(S)		6613 01		11-16-88	EI 04-30-89		3		153,800
54.	03-17-88	Arkansas	(S)		6614 01		11-17-88	EI 04-30-89				
55.	03-22-88	Ohio	(S)		6615 01		11-22-88	EI 04-30-89				
56.	03-24-88	California	(S)		6616 01		11-25-88	EI 04-30-89				
57.	03-29-88	Iowa	(S)		6617 01		11-29-88	EI 04-30-89				
58.	04-14-88	Texas		2312 12	6618 00	06-13-88	01-17-89		10		145,900	
59.	04-15-88	California	(S)		6619 01		12-15-88	EI 04-30-89				
60.	05-03-88	Florida		2313 12	6620 00	07-05-88	02-03-89		6		303,600	
61.	04-29-88	Texas	(S)		6621 01		12-29-88	EI 04-30-89				
62.	05-05-88	Oklahoma	(S)		6622 01		01-05-89	EI 04-30-89				
63.	05-27-88	New York		2314 05	6623 00	07-26-88	02-28-89		18		1,562,600	
64.	06-01-88	Kentucky		2315 12	6624 00	08-01-88	03-01-89		22		1,279,500	
65.	05-25-88	Georgia	(S)		6625 01		01-25-89	EI 04-30-89				
66.	08-15-88	California			6626 00		05-15-89	EI 05-31-89*		2		576,900
67.	08-15-88	Illinois			6627 00		05-15-89	EI 05-31-89*		11		885,200
		Indiana (C)			6695 00			EI 05-31-89*				
68.	08-15-88	California			6628 00		05-15-89	EI 05-31-89*				
69.	06-27-88	Montana	(S)		6629 01		02-27-89	EI 04-30-89				
70.	07-05-88	Arizona	(S)		6630 01		03-06-89	EI 04-30-89				
71.	07-21-88	Missouri	(S)		6631 01**		03-21-89	EI 04-30-89		9		779,700
72.	07-14-88	Ohio	(S)		6632 01		03-14-89	EI 04-30-89		7		615,000
73.	07-19-88	Alabama	(S)		6633 01		03-20-89	EI 04-30-89				
74.	07-21-88	Idaho	(S)		6634 01		03-21-89	EI 04-30-89				
75.	07-21-88	Wisconsin	(S)		6635 01**		03-21-89	EI 04-30-89		19	1,403,800	
76.	07-22-88	Indiana	(S)		6636 01**		03-22-89	EI 04-30-89		12		1,542,300
77.	07-28-88	Wyoming	(S)		6637 01		03-28-89	EI 04-30-89		4		209,500
78.	07-29-88	Delaware	(S)		6638 01		03-29-89	EI 04-30-89		1		46,700
79.	07-29-88	South Dakota	(S)		6639 01		03-29-89	EI 04-30-89		82		5,244,200
80.	08-15-88	California		2316 05	6640 00	10-14-88	05-15-89	P 01-31-89	16		180,700	
81.	08-05-88	Maryland	(S)		6641 01		04-05-89	EI 04-30-89				
82.	08-05-88	West Virginia	(S)		6642 01		04-05-89	EI 04-30-89		2		237,800
83.	08-10-88	Iowa	(S)		6643 01**		04-10-89	EI 04-30-89		46		4,646,500
84.	08-15-88	New York			6644 00		04-15-89	EI 05-31-89*				
		Connecticut (C)			6696 00			EI 05-31-89*				
		New Jersey (C)			6697 00			EI 05-31-89*				
85.	08-12-88	New Jersey	(S)		6645 01		04-12-89	EI 04-30-89		2		115,400
86.	08-12-88	North Dakota	(S)		6646 01**		04-12-89	EI 04-30-89		253		17,268,000
87.	08-12-88	Pennsylvania	(S)		6647 01**		04-12-89	EI 04-30-89		4		822,100
88.	08-19-88	New York			6648 00		04-19-89	EI 05-31-89*		2		76,000
89.	08-17-88	Illinois	(S)		6649 01**		04-17-89	EI 04-30-89		12		1,494,000
90.	08-19-88	Michigan	(S)		6651 01**		04-19-89	EI 04-30-89		2		319,400
91.	08-19-88	Minnesota	(S)		6652 01**		04-19-89	EI 04-30-89		61		5,865,800
92.	08-22-88	Tennessee	(S)		6653 01**		04-24-89	EI 04-30-89		2		136,500
93.	08-24-88	Pennsylvania		2317 05	6650 00	10-24-88	04-24-89	P 1-31-89/EI 5-24-89*	9		720,300	

		New Jersey (C)				6682	00		05-24-89*					
94.	08-24-88	Kentucky	(S)			6654	01**		04-24-89	EI 04-30-89		2		43,700
95.	09-13-88	South Dakota				6655	00		06-13-89*			20		444,700
		Nebraska (C)				6698	00			EI 06-13-89*				
		Wyoming (C)				6699	00			EI 06-13-89*				
96.	09-13-88	Montana	(S)			6656	01		05-15-89*			74		4,084,600
97.	09-13-88	Mississippi	(S)			6657	01		05-15-89*					
98.	09-13-88	Louisiana	(S)			6658	01		05-15-89*			1		383,900
99.	09-21-88	Minnesota		2318	11	6659	00	11-21-88	06-21-89*	P 01-31-89	14		126,000	
100.	09-22-88	Florida		2319	08	6660	00	11-21-88	06-22-89*	P 01-31-89	286		4,863,000	
101.	09-20-88	Florida	(S)			6661	01		05-22-89*					
102.	09-23-88	New Jersey				6662	00		06-23-89*					
103.	09-16-88	New York	(S)			6663	01		04-16-89	EI 04-30-89				
104.	09-29-88	California	(P)	2320	05	6664	00	11-28-88	06-29-89*	P 01-31-89	83	2	3,055,400	34,900
		Nevada (C)				6683	00			EI 06-29-89*				
FY 1988 Subtotal											11,403	704	$216,615,040	$48,870,000

FISCAL YEAR 1989 - DISASTER DECLARATIONS

	EFFECTIVE DATE	STATE	PHYSICAL DECLARATION NUMBER	ECONOMIC INJURY NUMBER	PHYSICAL TERMINATION DATE	ECONOMIC INJURY TERMINATION DATE	(Extended as result of PL 100-590 P or EI	Loan Approvals through May 3, 1989 Number of Loans Physical	EIDL	Amount of Loans Physical	EIDL
1.	10-04-88	Virginia	(S)	6666 01		06-05-89*					
2.	10-05-88	Texas	(P) 2321 08	6667 00	12-05-88	07-05-89*	P 1/31/89	214	2	987,600	16,600
3.	10-06-88	Wyoming		6665 00		07-06-89*			15		419,200
		Idaho (C)		6700 00		07-06-89*					
		Nebraska (C)		6747 00		07-06-89*					
		Colorado (C)		6748 00		07-06-89*					
4.	10-14-88	Utah	(S)	6668 01		06-12-89*					
5.	10-14-88	Idaho	(S)	6669 01		06-12-89*			6		265,000
6.	10-18-88	New York	(S)	6671 01		06-19-89*					
7.	10-19-88	Montana		6670 00		07-20-89*			23		872,300
		Wyoming (C)		6701 00		07-20-89*					
		Idaho (C)		6702 00		07-20-89*					
8.	11-23-88	Arkansas	(P) 2322 00**	6672 00	01-23-89	08-23-89*		45		900,800	
		Louisiana (C)		6678 00		08-23-89*					
		Mississippi (C)		6679 00		08-23-89*					
		Missouri (C)		6680 00		08-23-89*					
9.	11-30-88	Oklahoma	2323 05**	6673 00	01-30-89	08-30-89*		9		198,600	
		Texas (C)		6674 00		08-30-89*					
10.	11-30-88	Missouri	2324 12	6675 00	01-30-89	08-30-89*		16		244,600	
		Illinois (C)		6676 00		08-30-89*					
11.	12-02-88	North Carolina	(P) 2325 12	6677 00	02-02-89	09-05-89*		168	1	2,546,600	42,800
		Virginia (C)		6681 00		09-05-89*					
12.	12-14-88	New York	(S)	6685 01		08-14-89*					
		New Jersey (C)		6703 01		08-14-89*					
		Pennsylvania (C)		6704 01		08-14-89*					
13.	12-20-88	South Carolina	(S)	6686 01		08-21-89*					
		North Carolina (C)	(S)	6705 01		08-21-89*					
14.	12-22-88	Pennsylvania	2326 05	6684 00	02-21-89	09-22-89*		10		116,000	
15.	12-22-88	Oregon	(S)	6687 01		08-22-89*			1		125,300
		Nevada (C)	(S)	6706 01		08-22-89*					
16.	12-29-88	Florida	(S)	6690 01		08-29-89*					
17.	12-29-88	Florida	(S)	6691 01		08-29-89*					
18.	12-29-88	Texas	(S)	6692 01		08-29-89*			8		798,100
		Arkansas (C)		6707 01		08-29-89*					
		Oklahoma (C)		6708 01		08-29-89*					
		New Mexico (C)		6743 01		11-13-89*					
19.	01-04-89	Missouri	2327 12	6688 00	03-03-89	10-04-89*		23		439,600	
		Arkansas (C)	2328 12	6689 00		10-04-89*					
20.	01-13-89	Illinois	(P) 2329 12	6709 00	03-17-89	10-13-89*		43		1,831,600	
		Indiana (C)		6710 00		10-13-89*					
21.	01-23-89	Georgia	(S)	6712 00		09-25-89*					
		Florida (C)	(S)	6713 01		09-25-89*					
		North Carolina (C)	(S)	6714 01		09-25-89*					
		South Carolina (C)	(S)	6715 01		09-25-89*					
22.	01-25-89	Oregon	(S)	6719 01		09-25-89*					
23.	01-26-89	California	2330 05*	6711 00	03-27-89	10-26-89*		22		395,100	

24.	02-03-89	Utah		2331	06*	6716	00	04-06-89	11-03-89*				
		Arizona (C)		2332	06	6717	00	04-06-89	11-03-89*	5		71,700	
		Nevada (C)		2333	06	6718	00	04-06-89	11-03-89*				
25.	02-03-89	Florida				6720	00		11-03-89*				
		Alabama (C)				6721	00		11-03-89*		5		150,400
26.	02-22-89	New York		2334	05	6722	00	04-24-89	11-22-89*				
		Connecticut (C)		2335	05	6723	00	04-24-89	11-22-89*	6		576,900	
		New Jersey (C)		2339	05	6727	00	04-24-89	11-22-89*				
27.	02-23-89	Tennessee		2336	06	6724	00	04-24-89	11-24-89*				
28.	02-23-89	Tennessee		2337	06	6725	00	04-24-89	11-24-89*	11	1	127,900	3,400
		Kentucky (C)		2338	06	6726	00	04-24-89	11-24-89*	9		102,200	
29.	03-01-89	Pennsylvania		2340	05	6728	00	05-01-89	12-01-89*				
		Maryland (C)		2341	05	6729	00	05-01-89	12-01-89*	2		12,800	
		Delaware (C)		2342	05	6730	00	05-01-89	12-01-89*				
30.	02-24-89	Kentucky	(P)	2343	06**	6731	00	04-27-89	11-24-89*				
		Indiana (C)				6732	00		11-24-89*	193		2,764,100	
		Ohio (C)				6733	00		11-24-89*				
		West Virginia (C)				6741	00		11-24-89*				
		Virginia (C)				6742	00		11-24-89*				
		Illinois (C)				6744	00		11-24-89*				
		Missouri (C)				6745	00		11-24-89*				
		Tennessee (C)				6746	00		11-24-89*				
31.	02-22-89	Nevada	(S)			6734	01		10-23-89*				
		California (C)	(S)			6735	01		10-23-89*				
32.	03-08-89	Massachusetts		2344	05	6736	01	05-08-89*	12-08-89*				
		New Hampshire (C)		2345	05	6737	01	05-08-89*	12-08-89*	5		313,700	
33.	03-03-89	Arkansas	(S)			6738	01		11-03-89*				
34.	03-03-89	Oklahoma	(S)			6739	01		11-03-89*				
35.	03-07-89	New York	(S)			6740	01		11-07-89*				
36.	04-10-89	Alaska				6749	00		01-10-90*				
37.	04-12-89	Indiana		2346	12	6750	00	06-12-89*	01-12-90*				
		Illinois (C)		2347	12	6751	00	06-12-89*	01-12-90*				
38.	04-26-89	Texas	(P)	2348	06	6752	00	06-23-89*	01-24-90*				
		Arkansas (C)				6753	00		01-24-90*				
		Louisiana (C)				6754	00		01-24-90*				
FY 89 Subtotal										781	62	$ 10,443,600	$ 2,693,100
FY 88 AND FY 89 TOTAL										12,184	766	$227,058,640	$51,563,100

(P) Denotes major disasters declared by the President
(S) Denotes disaster declared pursuant to a designation by the Secretary of Agriculture
(C) Denotes declaration of contiguous counties in an adjacent state pursuant to PL 100-590

* Indicates an application filing period has not yet been closed and applications are still being received; the ultimate number of loans approved will probably increase.

** Indicates that the application filing period has expired but that more than 5 applications (including late filings and reconsiderations of declines) are still in process; the ultimate number of loans approved will probably increase.

For all other eclarations, the number of loans approved is not expected to increase significantly.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

7(a) GUARANTEE LOAN PROGRAM

Question:

Madam Administrator, what is your best estimate of the funding need for the Sec. 7(a) guaranteed loan program next year?

Is there any likelihood that SBA could meet these needs without Congress providing for a substantial increase above the current appropriations level of about $2.4 billion in guaranty authority?

Answer:

It is still unclear whether the recent increased level of demand for SBA guaranteed loans is permanent or temporary. If this increased level of program activity continues, a shortfall of approximately $100 million may occur near fiscal year end - for a total FY 1989 demand of some $2.7 billion. Demand for FY 1990 guaranty authority will depend on interest rates and growth in the economy.

Alternatives to increased appropriations include:

1. Limit the availability of funds to some segments of the small business community which are now being served by means of tightened eligibility requirements and/or credit standards.
2. Require increased lender exposure by decreasing the percentage of SBA's guaranty. A decreased SBA exposure will help spread the appropriated authority to more small businesses.
3. Increased user fees would provide additional revenues to the government, and thereby decrease SBA's appropriation and outlay requirements.

GUARANTY FEES

Question:

One of the proposals in this budget is an increase in the guaranty fee for Sec. 504 Development Company loans from the current 0.5% to 5%. This is a ten-fold or 1000% increase in a program which, as I understand, enjoys a 95-97% currency rate on its loans and on which SBA's net losses are negligible because they are secured by real estate.

How can you justify such an exorbitant increase, which does not seem to be related to experience in the program?

Answer:

The original proposal for a 5% across the board user fee on all SBA loan programs was an attempt to shift the cost of these programs from the general taxpayer to those whom the programs benefit directly. Increased fees would also work to make these programs actuarially sound and self-sufficient.

DISASTER LOANS

Question:

The Administration proposes to eliminate entirely the SBA disaster lending program for communities which have been devastated by natural disasters. What duty does the government owe to people in these circumstances, and how does this proposal fit with the President's promise for a "kinder and gentler" America?

Answer:

If it were fiscally feasible, it would certainly be possible to continue to offer subsidized disaster loans to victims of physical disasters. However, the requirements of fiscal constraint in this time of budget deficits must also be considered. The idea is that each individual should be given the opportunity to determine for themselves the degree of risk they are willing to accept in any given situation depending on their own personal circumstances.

LOAN ASSET SALES

Question:

What would be the long-term impact on SBA's revolving funds of sale of SBA loans, as is proposed in the budget? Wouldn't these sales reduce the solvency of these funds in short order, so that additional appropriations would be required to continue the programs?

Answer:

The sales of loans as proposed in the budget would have no virtual impact on appropriation requirements. The reasons for this are:

1. In the business loan and investment fund, the sale of $73 million has a very minimal annual impact on revenues, and therefore, would not effect future appropriation requirements or fund solvency.
2. In the disaster loan fund, we currently have a balance of about $900 million. Although we propose to sell the entire portfolio over the next five years, we also propose to eliminate all new direct lending. Therefore, the fund will experience a dramatic build-up in its balance due to the revenues from these sales.

MINORITY BUSINESS DEVELOPMENT AGENCY

Question:

What is the basis of the Administration's decision to reverse the proposal of the previous two years that the Minority Business Development Agency at Commerce be transferred to SBA? Was the Reagan Administration wrong in saying that this Agency's functions could more efficiently be performed by SBA, or is this simply a political decision to appease certain special interest groups who wanted to stay on the money pipeline at Commerce?

Answer:

The Administration feels the MBDA can more efficiently serve the public by remaining at the Department of Commerce.

SUBCOMMITTEE RECESS

Senator **Bumpers**. This will complete today's hearing. So we will stand in recess until 10 a.m., Wednesday, May 10, when we will hear from the Supreme Court. Thank you very much.

Mr. **Holloway**. Thank you, Mr. Chairman.

[Whereupon, at 11:30 a.m., Tuesday, May 2, the subcommittee was recessed to reconvene at 10 a.m., Wednesday, May 10.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

WEDNESDAY, MAY 10, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:04 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Rudman, and Kasten.

THE JUDICIARY

SUPREME COURT

STATEMENT OF SANDRA DAY O'CONNOR, SUPREME COURT JUSTICE

ACCOMPANIED BY:
JUSTICE BYRON R. WHITE
JUSTICE ANTONIN SCALIA

OPENING REMARKS

Senator HOLLINGS. The subcommittee will be in order. We welcome you, Madam Justice, Justice White, and Justice Scalia. We have had, Senator Rudman and myself, the opportunity to review the needs of the Court with the Chief Justice, and as I recall, it involves additional book shelving, some computerization, and some attention to fees, but we wanted to make an official record. We are not worried about you folks. You are all totally within the ball park with your budget request.

HISTORY OF S-146

Senator Rudman and I have been discussing the history of the Court and I recall I had a room upstairs that was Chief Justice Taft's office. But this particular hearing room—S-146—was the chamber for the U.S. Supreme Court in which *Marbury* vs. *Madison* was handed down.

Senator RUDMAN. We have it right here, Mr. Chairman. I thought the three Justices would like a copy of the political and the judicial history of the room, so I brought along three copies.

Justice O'CONNOR. Thank you. That is great.

Senator HOLLINGS. We will put a copy in the record.

[The information follows:]

A POLITICAL AND ARCHITECTURAL HISTORY OF
ROOMS S-146, S-146A, S-145
IN THE
UNITED STATES CAPITOL

Located on the first floor of the original North or Senate Wing, S-146, S-146A and S-145 are among the most historic rooms in the Capitol. In the first decade of the nineteenth century, before rooms could be permanently assigned, the occupants of the North Wing were shuffled about as the building operations continued and conditions demanded. S-146 and S-146A then comprised a single committee room which, as the largest such room in the Capitol, was borrowed by the Supreme Court for use as its chamber from 1801 until 1807. Shortly thereafter the Senate met in the same room. In this early period these rooms hosted some of the most significant events in American History.

The Capitol was originally constructed under the provisions of the 1790 Residence Act. This legislation authorized President George Washington to appoint a three-man commission responsible for the creation of the Federal City on the banks of the Potomac River. To acquire a design for a "Congress House" the commissioners were obliged to hold a competition offering $500 and a city lot to the winner. An amateur architect from the British West Indies named William Thornton eventually took the prize with his Neo-classical design for a Capitol with a domed center building flanked by wings - one for the House of Representatives and one for the Senate.

Construction began in 1793 and progressed slowly. After three years only the foundations were finished and it was decided to abandon work on the domed Center Building and the South Wing in order to concentrate all effort in finishing the North Wing. With no time to spare the North Wing was prepared to receive the Congress, Courts, and Clerks upon their arrival in November 1800.

The North Wing was a three story structure, 128 feet wide, 121 feet deep, built of stone and brick with a facing of Aquia Creek sandstone. It provided a two story semi-circular chamber for the Senate, a large room for the Library of Congress in which the House of Representatives would meet temporarily, five committee rooms, six rooms for clerks and sundry lobbies and stairs. Four committee rooms occupied the western portion of the first floor: Committee Room No. 2 is now known as S-146 and S-146A; and Committee Room No. 3 is today numbered S-145. These rooms were relatively plain, simple affairs with bare wooden floors, unpainted plaster cornices[1], plaster walls with three coats of paint[2] and paneled doors grained to imitate mahogany.[3] In the fall of 1799, the superintendent of construction, James Hoban, was able to report that the committee rooms:

> "...are floored, the doorways and windows trimmed - the sashes all fitted to run double - The walls and ceilings finished and cornices done in stucco ornament - the woodwork,architrave, base and plinth, subbase and skirting painted one coat."4

Hoban's report described neat, business-like rooms without elaborations such as dado paneling or pediments above doors and windows. These refinements would logically belong in rooms of a more public character.[5] S-146 was heated by two fireplaces, one centered on the east wall and another centered on the south wall. Each was trimmed with a "plain neat" wooden mantel.[6] Niches flanking the east door leading into S-145 were apparently intended for cast iron stoves to heat that room.[7]

Upon the removal of Congress to its third and final home under the Constitution, S-145 and S-146 probably fulfilled the intended function as committee rooms. In 1801, however, S-146 (together with what is now S-146A) assumed its place in the history of the Capitol as the meeting place for the Supreme Court.[8] Presided over by Chief Justice John Marshall, the Supreme Court handed down some of its most significant decisions while sitting in S-146:

1. Marbury v. Madison; 1 Cranch 137; 1803.
   --power of the Court to overturn unconstitutional legislation by Congress.

2. Stuart v. Laird; 1 Cranch 299; 1803.
   --validity of Repeal Act of 1802 abolishing circuit court judgeships.

3. U.S. v. Fisher; 2 Cranch 358; 1805.
   --constitutionality of federal statue re. bankruptcy; outlined doctrine of implied powers later developed in McCulloch v. Maryland.

4. Huidekoper's Lessee v. Douglas; 3 Cranch 1; 1805.
   --Federal jurisdiction over land grant cases and enforcement of Supreme Court decrees (Pennsylvania legislature resolved to bar any such further suits, but governor vetoed it).

5. Murray v. The Charming Betsy; 2 Cranch 64; 1804.
   Maley v. Shattuck; 3 Cranch 458; 1806.
   -interpretation of non-Intercourse Act construed so as not to conflict with law of nations.

6. Strawbridge v. Curtiss; 3 Cranch 267; 1806.
   --sharply limited access to federal courts on diversity citizenship grounds; complete diversity had to exist.[9]

Of these, the most famous decision was the case of Marbury vs. Madison (1803) which firmly and unequivocally established the Supreme Court as the interpreter of the Constitution. Here Marshall stated that: "It is emphatically, the province and duty of the judicial department, to say what the law is." In these few words the principal of judicial review was firmly yet simply stated. Few cases decided by the Supreme Court are as significant in the nation's history as Marbury vs. Madison.

William Marbury had been appointed a Justice of the Peace for the District of Columbia by President John Adams in the last hours of his administration -- a so-called "mid-night appointment." His commission, however, was not delivered and the incoming administration of President Thomas Jefferson refused to recognize its validity. Marbury sued the administration in the person of its Secretary of State James Madison. Marshall held that the law which gave the Supreme Court the power to restore Marbury's commission was unconstitutional and therefore null and void. While Marbury did not gain his office (a small defeat for the Federalist), Marshall scored a lasting victory for the Court by overturning unconstitutional legislation. The idea of the judicial branch overturning an act of the legislative branch so alarmed the Jeffersonians that they launched an attack on the Courts through the legislative power of impeachment. Ultimately the attacks stopped when the Senate failed to convict Associate Justice Samuel Chase in 1805. Admitting defeat, Jefferson acknowledged that the impeachment weapon was "not even a scarecrow." Until his death in 1835, Marshall continued to steer the Supreme Court along its unique course based on the principles handed down in Marbury vs. Madison.

While the Supreme Court sat in S-146 the appearance of the room seemed "half finished... meanly furnished and very inconvenient" to the architect B. Henry Latrobe.[10] By "meanly furnished" Latrobe probably meant that the furniture was common -- consisting probably of Windsor chairs and plain tables with baize coverings. David Hopkins suggested that the "...judges seat should be elevated, the clerk [provided] a table and the Attorney General [provided] a seat. Likewise the seats for the Gentlemen of the bar and provisions for spectators [should be] in a Style becoming the Dignity of the Court." He could not give specific instructions on the arrangement of the room because he had never seen it.[11]

During this period, the room next door (S-145) was in constant demand by various committees of the Senate. As Latrobe told Jefferson in 1805:

> "...The first Member of a committee who could get it every morning seized it for use of his Committee. That thus a Committee on a trifling business were often in possession of the room, while the most important affairs were transacted in a corner of the Senate chamber amidst (?) usually preceding the opening of the house".[12]

Apparently, the manner in which S-145 was "seized" by a committee left the rest of the Senate grumbling for "some show of attention to their accommodation". Latrobe was determined to provide the Senate with adequate, if not luxurious quarters, but his chance to do this would have to wait.

In 1807 a major shift occurred at the Capitol prompted by two events: the chamber for the House of Representatives was ready for use in the South Wing and the architect B. Henry Latrobe was about to rebuild the interior of the North Wing. Accordingly, the House of Representatives moved into its chamber, the Supreme Court moved into the Library where the House had met, and the Senate moved into S-146 (together with what is now S-146A.) The Senate continued to sit in S-146 throughout both sessions of the Tenth Congress (October 26, 1807-April 25, 1808; November 7, 1808-March 3, 1809).

The Tenth Congress, which was the last in the administration of President Thomas Jefferson, is best remembered for the measures it took to forestall a second war with Great Britain. In response to Britain's policy of intercepting American ships on international waters, and impressing American seamen on the grounds that they were deserters from His Majesty's Navy, the Congress passed the Embargo Act, approved on December 22, 1807.[13] This legislation closed American harbors to all shipping -- enraging New England's merchants and, coincidentally, fostering her home industries. On March 1, 1809, the Embargo Act was replaced by the Non-Intercourse Act[14] which reopened the ports to all nations except Britain and France. Jefferson's efforts to enforce America's rights as a neutral nation were largely unsuccessful. In 1812, the nation was again at war with Britain.

In the Tenth Congress thirty-four Senators used S-146 as their chamber, presided over by Vice President George Clinton. Perhaps the most famous Senator at that time was John Quincy Adams, son of the former president and himself a future president. Serving with Adams was crusty James Bayard of Delaware, the last of a dying breed of staunch Federalists.

For the Eleventh Congress, the Senate moved from S-146 to the Library space on the second floor. The Supreme Court was no longer meeting there, preferring instead the comforts of Long's Tavern. In the mean time it may be assumed that S-146 reverted to its original use as a committee room.

In 1810, Latrobe had completed the reconstruction of the eastern half of the North Wing and was eager to continue the work for the western half. For that part of the North Wing, Latrobe had designed a completely new, fireproof room for the Library of Congress which, had it been built, would have been America's first, and perhaps finest, essay in the Egyptian taste. Below the library Latrobe had planned to reconstruct the committee rooms with masonry vaults along a plan to agree with the structural loads imposed from above. As with all vaulting in the North Wing, Latrobe planned to carry the weight of the new masonry independently of the existing outside walls which were not sufficiently thick to be trusted. This point is well illustrated by the three bay arcade in S-145. It replaces the west wall as a principle supporting member for the groin vault which forms the ceiling of the room.

Because of the War of 1812, Latrobe's plans for the western half of the North Wing were delayed, only to become part of the restoration of the Capitol after its destruction by British incendiaries on August 24, 1814. The large quantity of timber in the floors, walls and ceilings, as well as the books in the Library of Congress, guaranteed that the destruction of the western half of the North Wing would be total and complete. Restoration of the Capitol was begun after Congress authorized President James Madison to borrow $500,000 from local banks to finance the rebuilding effort. Initially, Latrobe planned to rebuild the North Wing of the Capitol according to his pre-fire designs which included the Egyptian Revival Library of Congress.

While construction was well under way the Senate ordered Latrobe to enlarge its chamber and to move the Library of Congress (on plan at least) out of the North Wing so that its space might be devoted to two floors of offices and committee rooms.[15] The vaults of the first floor rooms, including those over S-146 and S-145, had been finished when the order came on September 19, 1816. Latrobe had to remove those newly constructed vaults in order to rebuild them five feet higher to bring the rooms above to the proper floor level. (The library was to be sunk five feet below the general floor level to gain more space for books.) Once the revaulting of the western rooms on the first floor of the North Wing was completed in 1817, the present form of S-146 and S-145 was achieved.

The restoration of the North Wing was sufficiently advanced by 1819 to allow the Supreme Court to occupy its chamber in March. The work was completed by the architect Charles Bulfinch, who succeeded B. Henry Latrobe in 1818. Four rooms across from the chamber were used by the Supreme Court as offices. S-145 was used by the Court's chief clerk. The specific use of S-146 during this period is not recorded. It was partitioned in 1826 to create what is now S-146A so that a staircase could be built to provide access to the Senate privies. The privies were housed in a one story structure placed against the west foundation wall in an area excavated for that purpose. Views to the privies were hidden by an earthen terrace which formed twin courtyards on the Capitol's West Front. The Senate privies stood until 1866, and their foundation may still be seen today.[16]

At some indeterminable point, the staircase to the privies was removed and S-146A reunited with S-146. In 1853 the room was shown as the Law Library.[17] Presumedly, it remained as such until ca. 1860 when the library moved into the old Supreme Court Chamber. Twenty years later the Congressional Directory indicated that S-146 was part of the House Document Room. In 1886 it was returned to the Supreme Court for use as a storeroom. For unspecified reasons, the storeroom was again partitioned in the 1890s to create what is now known as S-146A. After the Court moved into its splendid new quarters across the street in 1935, S-146 and S-146A became a hearing room and office respectively. By 1963 these rooms were assigned to the Appropriations Committee. Thus the room in which John Marshall delivered some of his most significant pronouncements, and the Senate debated Thomas Jefferson's non-intercourse policies was returned to a Senate committee -- exactly as intended in the original plan of 1793.

The history of these rooms concludes undramatically with S-145, which served as the Senate barber shop from ca. 1860 until 1980. Shortly after the barber shop was relocated, work was begun to return S-145 to a dignified appearance in keeping with the long history of the room. It is now under the jurisdiction of the Senate Committee on Rules and Administration and is used frequently by families of Senators as a lounge and meeting place.

FOOTNOTES

Records of the Commissioners are preserved in the National Archives Record Group 42, Records of the Office of Public Buildings and Grounds. Latrobe correspondence from the microfiche edition of his papers, Maryland Historical Society.

1. Commissioners to Messrs. Graham, Haskins and Company, May 22, 1799. When ordering plaster for the cornices, the Commissioner indicated that "a good white or blue color" was wanted, implying that the cornice would not be painted.

2. Commissioners contract with painter Lewis Clephan, July 3, 1799. Colors used for painting the North Wing included Spanish brown, lamp black (probably for fireplaces and base boards), Prussian blue, Turkey umber, and ochre.

3. Ibid. The doors were grained and varnished at the cost of five shillings eight pence, Maryland currency, per yard.

4. James Hoban to the Commissioners, November 18, 1799.

5. The walls of the Senate Chamber, for instance, had panels containing painted imitations of porphyry. Commissioners' proceedings, January 19, 1801.

6. Commissioners' proceedings, March 10, 1800.

7. The most reliable floor plans of the North Wing for this period were produced by B.H. Latrobe in November 1806.

8. B.H. Latrobe to Thomas Jefferson, September 2, 1807.

9. This list provided through the courtesy of the Office of the Curator, Supreme Court of the United States.

10. B.H. Latrobe to James Madison, September 8, 1809.

11. David Hopkins to Alexander White, January 26, 1801.

12. B.H. Latrobe to Thomas Jefferson, August 13, 1805.

13. 2 Stat. 451-453.

14. 2 Stat. 528-533.

15. The order was dated September 19, 1816 and was issued to Latrobe by the Commissioner of Public Buildings, Samuel Lane.

16. See the author's "Bulfinch Privies: A Chronology" February 8, 1984. On file in the Curator's Office, Architect of the Capitol.

17. See "Plan of the Basement Story As Revised and Approved by the President of the U.S. 1853". Drawing signed by T. U. Walter and M. C. Meigs. Collection of the Architect of the Capitol.

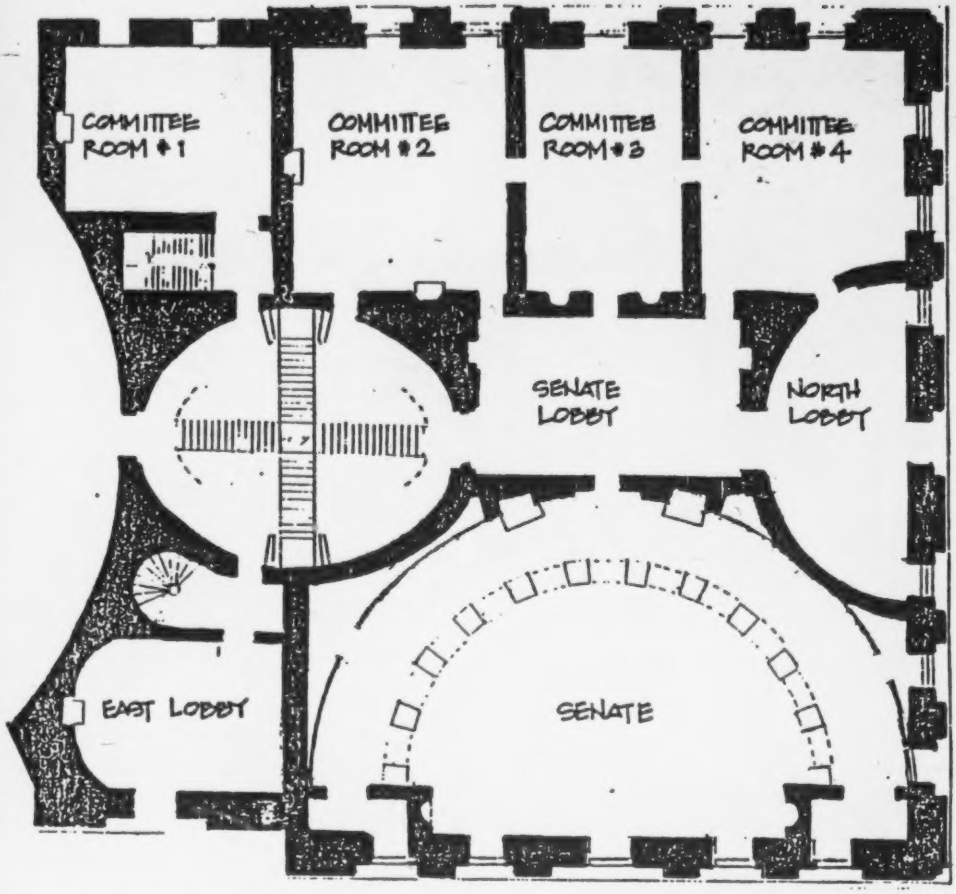
ILLUSTRATIONS

A. North Wing of the Capitol prior to the reconstruction program of 1808-1810. Committee Room #2 was occupied by the Supreme Court from 1801 until 1807 and by the Senate for the Tenth Congress, 1807-1809. In its present form, Committee Room #2 is now S-146 and S-146A while Committee Room #3 is S-145. Plan by author based on B.H. Latrobe's North Wing plans dated November 1806 in the collection of the Architect of the Capitol.

B. B. H. Latrobe to Thomas Jefferson, September 2, 1807. Latrobe's sketch keyed to the text of his letter to the President documents the use of Committee Room #2 as the meeting place for the Supreme Court for the period 1801-1807. Original letter in the Manuscript Division, Library of Congress. Machine copy from microfiche edition of the Latrobe Papers, Maryland Historical Society.

C. Plan and section of proposed reconstruction of the committee rooms under the Library of Congress, B.H. Latrobe, ca. 1808. This scheme, done prior to the fire of 1814, was the basis for the reconstruction of the first floor committee rooms after the fire. The curving, apsidal treatment in what is now S-146 was never built. Its form was required to support the Library above and when the Library was moved (on plan) to the West Central Building, the apse became unnecessary and was abandoned. Note too the new masonry necessary to vault the interior spaces without depending on the old walls.

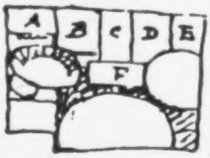
D. "Capitol U.S. Plan of Basement", A.J. Davis, 1834. Original in Prints and Photographs Division, Library of Congress. Plan shows the First Floor of the Capitol as rebuilt and completed 1815-1826. Note the staircase in what is now S-146A which gave access to the Senate privies. The roof plan of the privies is also shown.

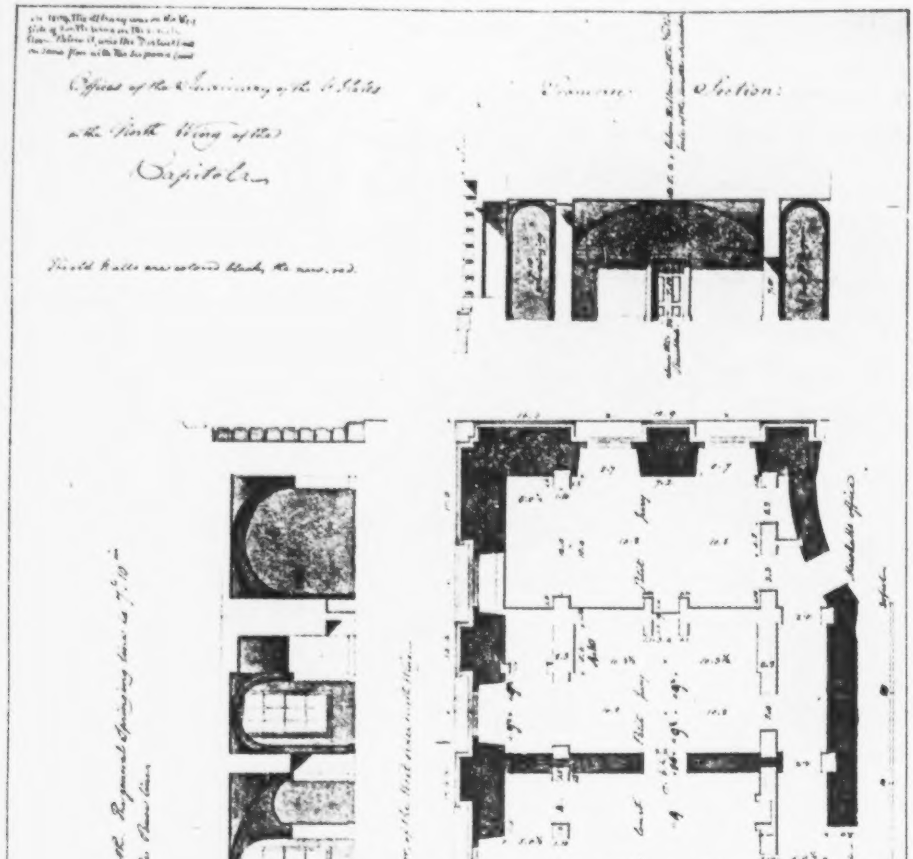

COMMITTEE ROOM # 1
COMMITTEE ROOM # 2
COMMITTEE ROOM # 3
COMMITTEE ROOM # 4
SENATE LOBBY
NORTH LOBBY
EAST LOBBY
SENATE

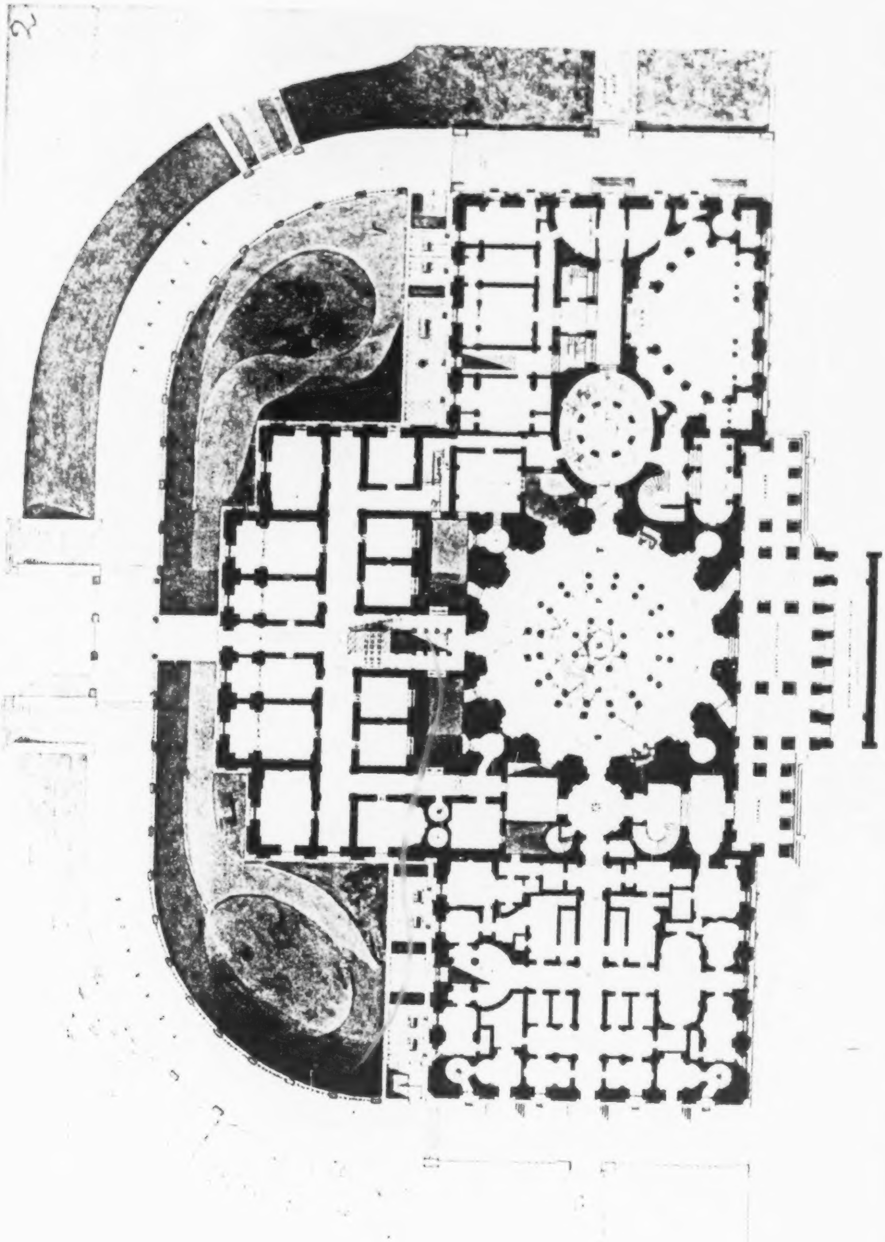
appropriation for the fireproof authorised it. — I must ~~therefore erect~~ only a temporary Shed at that end. —

The work at the North wing goes on rapidly, but we have taken off so large a portion of the old roof. Every thing that is of timber we find rotten. I have several things which required consideration to lay before you on the subject of this wing but must explain them by drawings which I have not been able to make as yet.

I solicit your direction as to the following point. The room formerly occupied by the court, B must be deranged by breaking a door into it from the central lobby F. It is besides in a situation, which brings the persons attending the court into very inconvenient crowds close to the senate chamber. I propose therefore to remove the court for the next session into the library formerly occupied by the house of representatives where now the rising platforms remain, & to put the library into the very large Committee room over A which is very amply sufficient to contain it. This would save all the expence of refitting rearranging the library for the present, & be a very great convenience to us.




Offices of the Secretary of the U. States
in the North Wing of the
Capitol
The old walls are colored black, the new red.
Transverse Section.
Longitudinal Section from South to North. The general Springing line is 7.ft 10in
above the floor line, or 8.ft 6.in above the Base line
Plan of the Ground floor, of the North wing
Grand jury room
Clerk of the Court
Petit Jury
Petit Jury
Marshall's office
Lobby
20 feet



Senator RUDMAN. If we can be as wise as they were in *Marbury* vs. *Madison*, this committee will be doing all right.

Senator HOLLINGS. We didn't think they were wise. We tried to impeach the Associate Justice. They didn't like it at all. [Laughter.]

Justice SCALIA. Just think how many fewer lawyers there must have been if they could all get in this room.

Senator HOLLINGS. That is right.

Well, I had a Justice from South Carolina that was appointed but never confirmed, the second Chief Justice, John Rutledge, but they didn't let him in the room. They said, "The jury is still out on me."

But in any event, we do welcome you here in this small room, and we are delighted.

STATEMENT OF JUSTICE O'CONNOR

Justice O'CONNOR. I will lead off, if that is all right, Mr. Chairman. I would like to express on behalf of all of the members of the Court appreciation for your conduct of the hearing this morning and your willingness to listen to our problems, you and Senator Rudman. We appreciate the thought you have given to our problems.

Because you are already somewhat familiar with our budget problems, I am not going to read the statement that we have prepared to submit to you, but I just want to underscore the problem as we see it in a nutshell.

PREPARED STATEMENT

Senator HOLLINGS. The statement in its entirety will be included in the record. You can highlight it as you wish.

[The statement follows:]

STATEMENT OF JUSTICE SANDRA DAY O'CONNOR

Mr. Chairman and Members of the Committee, Justice White, Justice Scalia and I appreciate this opportunity to appear before your Committee to address the budget requirements of the Supreme Court for the fiscal year 1990.

We have with us today Noel Augustyn, Administrative Assistant to the Chief Justice; Alfred Wong, Marshal of the Court; and Tony Donnelly, Director of Budget and Personnel.

As usual, the budget request is divided between the Salaries and Expenses of the Court and Care of the Building and Grounds. The Total fiscal year 1990 budget for Care of the Building and Grounds is $5,714,000. My statement will be limited to the Salaries and Expenses of the Court. Mr. George White, Architect of the Capitol, will submit a statement to the Subcommittee regarding his segment of the total budget.

Our total fiscal year 1990 budget estimate for Salaries and Expenses is $17,313,000. This is an increase of $1,412,000 over the budget authority for 1989. If we exclude the base adjustments in our budget request, the actual increase in the budget authority for Court operations in 1990 is $270,000 more than in 1989.

This increase of $270,000 includes three program changes which we are proposing for fiscal year 1990. We are resubmitting, and increasing for inflation, our request for an additional $110,000 to fund the cost of the compact shelving project in the Supreme Court Library. You will recall that this item was originally part of the Court's requests in fiscal years 1988 and 1989. The shelving project must get under way if we are to solve our book storage problem that has become more critical over the last two years. It is clear that the compact shelving we are requesting here is only the first step in a long-range plan to increase the library's book storage capacity. In addition to seeking compact shelving, the Court's Librarian is taking other actions to meet the increasing demands for shelving space. These actions include continuous weeding of the collection, selectively adding new titles, using non-print resources such as microfiche, and studying the use of off-site storage for low-use but historically essential material. Compact shelving, which is the state of the art approach to the inherent problems of library space planning, allows the most efficient use of existing space.

The sum of $40,000 is requested to fund the conversion of Atex computer terminals in the Justices' Chambers to multi-purpose terminals. This conversion will reduce average annual equipment costs by approximately $25,000, and at the same time, permit the Atex terminals to be used for legal research of the Lexis and Westlaw databases, as well as for word processing and opinion drafting. This item was also originally requested in the fiscal year 1989 budget.

Finally, $120,000 is requested to replace existing Atex disk drives and to upgrade Atex software. The Atex computer system supports all work related to the drafting and printing of the Court's opinions. Reliability of the magnetic disk drives is paramount in protecting this important opinion information. Our present disk drive equipment, which is six or more years old, has been operating 18 hours a day, 358 days a year. Recently, we have experienced disk drive problems which have threatened production. We propose to replace the existing disk drives with more reliable "fixed disk" drives. At the same time, it will be necessary to upgrade the Atex system software to the latest available software release in order to install the new disk drives. We anticipate saving over $7,000 a year on the Atex maintenance contract as a result of installing the more dependable disk drives. More importantly, we will diminish greatly the likelihood of system failures.

The details and justifications for these items appear on pages 1.8 through 1.10 of our budget submission.

Once again, as in the Court's statement last year, I would like to comment on the condition of our current fiscal year 1989 budget. The Court's 1989 budget request was initially $16,448,000. This amount included $286,000 for program increases. The Chief Justice later withdrew the request for the program increases in recognition of the difficult fiscal pressures on the Congress at that time. At the same time however, the Chief Justice asked that you appropriate $16,162,000 which would at least cover the Court's budget base for fiscal year 1989. Our final appropriation of $15,901,000 is $261,000 less than the budget base. To make matters worse, we have had to absorb the cost of the January 1989 COLA of 4.1%. The COLA cost the Court at least $395,000 in additional salary and benefits.

In last year's budget statement, I expressed concern about the strain on the Court's operations resulting from cuts to our fiscal year 1988 budget. Today I express similar concerns, but Mr. Chairman, the situation is far more severe this year. In fiscal year 1989, 97% of the available budget will be spent on fixed costs including salaries and benefits, equipment maintenance, telephone, postage, and the printing of the Supreme Court Reports.

In order to cover the Court's fixed costs we have implemented drastic cuts. Specifically, in September of 1988, we imposed a hiring freeze for all but the most essential positions. As a result, 18 positions have not been filled in an effort to cover the funding shortfall. In addition, we have again eliminated the hiring of summer temporary employees, and the purchase of microforms in the Court's library. We have also eliminated travel and training, and drastically reduced spending on equipment, supplies and library books. These actions will enable us to cover the increased salary and benefit costs during fiscal year 1989 at the expense of inadequately supplying and equipping Court offices. Every Chambers and office of the Court has been affected by the hiring freeze, which is having a negative impact on the efficiency and morale of remaining employees who must take on extra work when positions become vacant.

We urge you very strongly to help us stop the erosion of the Court's budget by taking favorable action on the Court's fiscal year 1990 request. The increase items we request for 1990 are not luxuries but necessities. We are unable to address them from within existing funds because of the complete lack of flexibility. It is essential that the Court's budget base be restored as requested. If not, the supporting services, and indeed the very heart of the Court's important work will be seriously disrupted, with a severe impact on the Court's basic function.

This concludes my prepared statement Mr. Chairman. Justice White, Justice Scalia, the officers of the Court who are present, and I will be happy to answer any questions that you may have.

IMPACT OF BUDGET CUTS

Justice O'CONNOR. We are a small agency with barely over 300 employees. We are not asking for an increase in employees; we are not asking for any basic change in our program.

What has happened to us, as with other small agencies in government, is that through the budget cutback process, we have had less than our requested budget for several years, and Congress also has mandated certain pay increases for our employees. Most of our budget goes to salaries. I am only presenting the salary and expense portion of the budget. George White, the Architect of the Capitol, will submit the budget for buildings and grounds.

So our budget is highly labor intensive, and most of it goes to salaries. The result of this is that we have had mandated salary increases without any increase in our budget. We are at the point where 97 percent of all expenses are now fixed. We have no control, and the remaining 3 percent is insufficient for our urgent needs. We are very distressed about the status of the Court's budget. It is terribly important to the Court.

FISCAL YEAR 1990 BUDGET

We have asked this year for a total budget for 1990 of $17,313,000. That is basically a level which would try to restore our budget base and meet the needs of paying the mandated salaries and benefits that are existing in the Court.

The amount includes, however, three sums, fairly small sums, for program changes, if you would like to call it that. One is for library shelving of $110,000. We are simply out of shelf space in the library, and as you know, law books come in throughout the year with the publication of the opinions, and we are simply short of shelf space, desperately so.

We have asked for $40,000 to convert our Atex word processing and computer units that are in each chambers. Most of the Justices personally have one, and each law clerk has one. I believe the Senate has already converted its system to enable it to receive Westlaw and Lexis. We would like to do the same. We are now spending additional moneys, about $25,000 a year, for separate Westlaw or Lexis machines, and some of the chambers do not have these. But we would be able to eliminate that annual charge for the single one-time, $40,000 that it would take to convert our Atex units in the same manner. We think that is important to enable us to function as we should, to do our research, and to do the work of the Court.

Finally, we have asked for $120,000 to replace the Atex disk drives and update the Atex software. These things, we think, are needed because the equipment is old, and we are facing breakdowns, and we need to replace the present disk drives. Those aren't significant items, but we are concerned that we have our budget base restored so that we can operate as we need to. In a nutshell, that is it.

Senator HOLLINGS. For the modernization and the computerization, we will have to thank your colleague, Justice Louis Powell. All of you folks, Justice White and all of you all have been too conservative in your requests. I don't think you have ever heard that before, Justice White. [Laughter.]

Senator RUDMAN. You would have to read some of these opinions. [Laughter.]

Senator HOLLINGS. You haven't read my newspaper lately.

But, in the past, the whole thing was the clerk was qualified because he could type. They didn't even have a secretary. They couldn't dictate these suggested notes for you folks. So we are delighted that you are moving into the modern day of computerization and availability because I guess you have a backlog, a tremendous backlog still?

Justice O'CONNOR. On the printing of the reports?

CASELOAD

Senator HOLLINGS. On the cases themselves and everything else. I know it has been suggested we get an intermediate court.

Justice O'CONNOR. We have, of course, thanks to the action that the Congress took 1 year ago, we now have almost total discretion over what cases to take. Our appellate jurisdiction was made discretionary. That was of significant help to us, and we are continuing to receive almost 5,000 petitions a year. That is not a significant change from last year. We accept, for review, roughly 150 cases a year at those levels. So that is pretty much stationary.

Now, Justice White thinks we don't accept enough cases. He often reminds us of that. He might want to speak to that issue.

Justice WHITE. Well, the Court is very current. It just happens to work out that we don't take any more cases every term than we can decide. So we would be happy to do it that way, whether deliberately or just by chance. We would rather do it that way than get behind.

Senator HOLLINGS. Right.

HIRING FREEZE

Justice WHITE. So we are very current. But I must say, Mr. Chairman, and we have had to leave a lot of positions unfilled. I can feel it myself. I want some help sometimes, and I can't get it.

Senator HOLLINGS. The positions are unfilled, I noticed, Mr. Justice. In the summertime, the Court business rises in June, doesn't it?

Justice SCALIA. July.

Justice O'CONNOR. July.

Justice WHITE. July.

Senator HOLLINGS. Do you need them in July, in the summertime? Where is the shortage? The help that you can't get, I want to make sure that you get the help you need. Isn't that right?

Senator RUDMAN. Absolutely.

Justice WHITE. There is a secretarial pool at the Court that is available to help individual Justices when their own staff can't provide it. I have just one secretary, and so I often call on the secretarial pool rather than hire another secretary.

Justice O'CONNOR. They are down from six to one. Due to lack of funds, we can't fill the pool, and it is unavailable to meet our needs. But I think where we all feel the greatest need is in the library. They are so short handed that they cannot maintain the files, or the necessary papers to deal with the microfiche.

Senator **Rudman**. Mr. Chairman, I have discussed this privately with Justice O'Connor. We discussed it with the Chief Justice several weeks ago. I think there is no other committee that will take issue with what I am about to say, and that is that when it comes to the Congress dealing with the Court, I think there is a certain amount of comity involved here, and we really ought to do what you say you need, period.

I think this is the year that we ought to bring it back to where it ought to be, because this situation really is unthinkable. I mean, look at the total Federal budget and look at the Court. The Court ought to have what the Court needs.

On that point, we had discussed in a meeting that the needs at the library and the fact that some of the courts have authorization to use their fees toward libraries. Is that something this Court thinks it ought to have?

ATTORNEY ADMISSION FEES

Justice **O'Connor**. As a matter of fact, yes. The Justices have discussed whether we should try to keep attorney admission fees and set up a trust fund as is done by all the Federal courts of appeal to use for the benefit of the bench and bar.

Senator **Hollings**. Would that require a legislative change?

Justice **O'Connor**. That isn't clear, Mr. Chairman. I doubt that it does, but we certainly would want the Appropriations Committee to indicate to us in some fashion whether it is all right. What we think we can do from our own legal research is to enable the marshal to administer the program and to set up a trust fund and use it as the other Federal courts do, but we have never done it. If we are going to do it, we would like some indication from you that that is all right.

Senator **Rudman**. That amounts to about, what, $400,000 a year?

Justice **O'Connor**. Yes; it depends on how many lawyers and what we charge them.

Senator **Rudman**. But that is an average number, I suppose. It was earmarked.

Justice **O'Connor**. Yes.

Senator **Rudman**. Mr. Chairman, I think that I would fully support report language, if that is what is required, to make sure that that is earmarked. That seems reasonable for the Court if other courts do it.

Justice **O'Connor**. All the other courts do it.

Justice **White**. It has not been attempted.

Justice **Scalia**. I think we can do it legally, but we just didn't feel, having not done it in the past, that we ought to whip it through without approval.

Senator **Hollings**. How much money is involved, $400,000?

Senator **Rudman**. I think if the Court thinks it can do it legally, it can do it legally. [Laughter.]

Senator **Hollings**. I don't believe we could impeach them for that.

Justice **White**. Sometimes you think we misinterpret a statute.

Senator **Rudman**. We do, but you do have the last word.

Justice **Scalia**. You didn't ask what the vote was, Senator.

FISCAL YEAR 1990 BUDGET

Justice **White**. I must say, Mr. Chairman, our library isn't like an ordinary library. We have extremely skillful people there. They do much of the initial research for you. If you don't have the people and the equipment up there, you are really going to foul up the flow of our work. The Justice's time is a critical item in the Court. The next most critical is the law clerks. The library saves much time in that regard.

Senator **Hollings**. Secretaries, I use three right now. Any lawyer can keep two busy. We will get together to see that the pool receives greater support.

Justice **White**. The machines.

Justice **O'Connor**. The word processors are fabulous.

Senator **Rudman**. You want to now integrate those systems so you have all of the data bases coming up on the same system, which is what we have here.

Justice **O'Connor**. Exactly. We want to do what you have done here, right.

Senator **Rudman**. I dare say that before this session is over, we will get these things squared away. We have finally, I think, understood this year—due to the work of a number of you that communicate with us—that the problems are serious. For what we are talking about in terms of money, they ought to be handled.

Senator **Hollings**. We will get from Mr. George White, our Architect, the sufficiency of the shelves and everything else. Over at the Madison Library we had to reinforce the floor.

Justice **O'Connor**. He has done a study and indicates that the floors would support those shelves.

Justice **Scalia**. They are less convenient to use, but it is worth it for the additional book space.

Senator **Hollings**. Mr. Justice, did you want to add anything?

Justice **Scalia**. Mr. Chairman, no. Justice O'Connor has set it forth very well. I might just note that all three of the increases we are asking for involve matters that cut to the bone. We are talking about the library; about research tools (the computer terminals); and about disk drives and software for the word processing and printing system. These are not frills.

Senator **Hollings**. We understand, and we appreciate your appearance. Excuse me, Senator Bumpers. You are so quiet. [Laughter.]

ATTORNEY ADMISSION FEES

Senator **Bumpers**. You and Senator Rudman are doing very well. Mr. Chairman, I don't have much to add to this. My staff did prepare some committee report language that I will just submit and offer it for the committee's use in taking care of this problem of the fees.

Justice O'Connor, I was really, since that is taken care of, Mr. Chairman, I would also echo what Senator Rudman said. As I think about taking care of your needs for about $20 million including buildings and grounds, it is a pretty good bargain. I don't always think it is a bargain. [Laughter.]

It certainly is. Justice O'Connor, I was curious: That $440,000 in fees that the Court takes in, is that all admission fees?

Justice O'CONNOR. That is the attorney admission fees. We would not propose doing anything with the filing fees for actions. Those are turned over now.

Senator BUMPERS. When you say admissions, is that for new membership in the Court?

Justice O'CONNOR. Yes; well, that is for attorneys to be able to practice in the Supreme Court.

Senator BUMPERS. Four hundred forty thousand dollars at $100 a pop; are we taking in that many lawyers a year?

Justice O'CONNOR. Yes.

Senator BUMPERS. Therein lies the real problem, Mr. Chairman.

Senator RUDMAN. Raise it to $500.

Justice O'CONNOR. I think basically, they want to frame the certificate and hang it in their office.

Senator BUMPERS. You are looking at one who hung it and who was mighty proud of it.

Justice WHITE. Mr. Chairman, some years ago, though, the Court did keep its fees.

Senator BUMPERS. Until 1964, I think it was.

Justice O'CONNOR. Until 1964.

Justice WHITE. So it is nothing new.

Senator RUDMAN. Mr. Chairman, I just wanted to state that Senator Kasten, who usually would be here for this hearing, is at a hearing with Senator Leahy in foreign operations and wanted me to state for the record that he supports the position of the chairman and the ranking member.

Senator HOLLINGS. Very good. We appreciate your appearance here this morning. Thank you very much.

Justice O'CONNOR. Thank you.

Senator HOLLINGS. I want to hear from George White, our Architect. Thank you.

Senator KASTEN. This was a quick one.

Senator HOLLINGS. Did you have a statement you wanted to submit?

Senator RUDMAN. I did that for you.

Senator KASTEN. You guys move fast.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Thank you. There will be some additional questions we will submit to you for your response in the record.

[The following questions were not asked at the hearing, but were submitted to the Supreme Court for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Question. Justice O'Connor, during the budget hearing for FY 1987, you testified that over the previous 18 years the Supreme Court had returned approximately $7 million to the U.S. Treasury.

-- Did you return funds to the Treasury at the close of FY 1987 and FY 1988? If so, how much?

Answer. At the close of FY 1987 the Court returned $290,000 to the Treasury. We returned just $538 at the close of FY 1988 which indicates that the uncontrollable increases to the Court's fixed expenses have consumed the Court's budget.

Question. I see the majority of your $1.4 million requested increase in FY 1990 is for adjustments to your base.

-- Are those base adjustments for mandatory, uncontrollable costs?

Answer. Yes, the items listed as base adjustments on page 1.4 of the Court's budget justification are mandatory increases that we have had to cover by eliminating all discretionary spending and implementing a hiring freeze.

Question. We know that the Court did not receive its full request last year. There has been talk of a supplemental appropriation bill being funded by an across the board cut.

-- What would be the impact on Court operations if an across the board reduction of say one half of one percent were applied to your current year budget during the fourth quarter?

Answer. If the Court were to lose $80,000 this year in a one half of one percent cut, we would have to further reduce the library book budget as well as delay the printing of the Supreme Court Reports. There is no flexibility left in the Court's budget to absorb any further reductions.

Question. Justice O'Connor, I see you are requesting $110,000 for compact shelving in the Court's library.

-- Will the introduction of the compact shelving solve your book storage problems once and for all?

Answer. No. Compact shelving, which allows the most efficient use of existing space, will help the library's storage problem but it is not the only answer. The Court's Librarian will continue to weed the collection, selectively add new titles, use microfiche where appropriate, and explore the use of off-site storage for some material.

Question. Do you anticipate any further challenges to the constitutionality of the sentencing guidelines?

Answer.

Response of Justice O'Connor

Yes, there will likely be additional Constitutional challenges to the sentencing guidelines, notwithstanding the holding of this Court in Mistretta v. U.S. that the sentencing guidelines did not violate the separation of powers or involve an unconstitutional delegation of legislative power. At least 6 federal Courts of Appeals have rendered decisions rejecting Due Process challenges to the guidelines. Other cases may emerge in the future, but they will probably not be "system wide" challenges.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Question. The third page of Justice O'Connor's statement indicates that in order to meet the Court's fixed costs, you have been forced to implement drastic cuts, including a hiring freeze. As a result of this freeze, 18 positions have not been filled.

-- How long have these positions gone unfilled?

-- What types of positions are these?

-- What has been the specific impact of these vacancies?

Answer. The hiring freeze, which has now affected 22 positions, began in October, 1988. The vacancies occurred from July, 1988 to May, 1989. The following table illustrates the types of positions we have not filled.

Unfilled Vacancies

Jr. Library Assistant
Cataloging Clerk
Acquisitions/Serials Librarian
4 Secretaries
Assistant Admissions Officer
Publications Clerk
Programmer/Analyst
5 Laborers
4 Messengers
3 Police Officers

The Library has had two clerical vacancies, Jr. Library Assistant and Cataloging Clerk, since the beginning of FY 1989. The Acquisition/Serials Librarian and Messenger vacancies occurred after March 1989. The work normally handled by the two clerical positions, filing microfiche, filing looseleaf services, inserting pocket parts, and retrieving and delivering books and documents cannot be left undone. In 1988 the Library received 98,862 individual pieces of microfiche which had to be filed, most often, interfiled with existing fiche. This labor-intensive work must now be kept up-to-date by other staff.

Loose-leaf services are exceptionally expensive legal publications whose value lies in their currency, and therefore these volumes must be updated daily, weekly, and monthly. The Library subscribes to 500 loose-leaf titles which require individual replacement of well over 100,000 pages a year. Additionally, pocket parts are inserted into volumes throughout the Library, averaging 8,000 pieces a year. This labor-intensive work must continue, and, in the absence of the clerical staff must be redistributed to other staff in addition to their own full time responsibilities.

The result is that the Court is now paying professional librarians to do looseleaf filing and to retrieve and reshelve books that ordinarily the filer and messenger would do. The Court is also paying indirectly through the accumulation and use of compensatory time, in lieu of paid overtime, by library staff who must work extra hours just to keep up with the daily demands of the Court. Also, inability to hire an Acquisitions/Serials Librarian has made it impossible to test and implement the new automated Acquisitions System. This system is the last step in the implementation of the Library's automated system that was funded in FY 1986.

Vacancies in the Secretarial Support Unit have severely reduced the secretarial assistance to the Justices' Chambers which affects the ability to process the caseload. Also, Chambers personnel must now rely on the Atex User Manuals and the assistance of co-workers to solve Atex software problems.

In the Data Systems Office, the vacant Publications Clerk position reduces the multiple-shift coverage and the needed flexibility to cover in times of illness, vacations, etc. The need to use compensatory time to cover staff shortages is a self-defeating solution because the incumbents must take the leave sometime, thus further reducing coverage.

The vacant Programmer/Analyst position makes it so difficult to cover normal daily work that new development is virtually at a standstill. This is also self-defeating because we can provide neither enough support for users nor create productivity-improving applications which are so vital to helping the Court to weather the overall restrictions.

The vacancies in the Marshal's Office have severely curtailed administrative services throughout the Court, including Chambers. We are not able to meet high standards of cleanliness and order. Clerical and delivery services have been sharply reduced.

Question. What would be the impact on the Court if you were held to a current services (inflationary increase only) budget?

Answer. A current services budget for FY 1990, which would only provide an inflationary increase over the FY 1989 budget, would be disastrous for the Court. Since the Supreme Court's FY 1989 budget is inadequate, and fixed costs such as salaries and benefits tend to increase by more than normal inflation, a current services budget for FY 1990 would deepen the Court's current fiscal crisis. Merely adding an increase for inflation without restoring the Court's budget base would worsen the impact on the Court's ability to perform its basic functions.

The positions that are vacant now would have to remain vacant. The hiring freeze would apply to all subsequent vacancies. Since attrition would not provide adequate savings, a reduction-in-force and/or furlough would be required. Publication of the Supreme Court Reports would be delayed. Law book purchases would have to be cut further. The Justices rely heavily on the Library's collection. Many of the books require yearly updates. Without proper funding, it would be impossible to maintain the existing Supreme Court Library collection. Of course, we would not be able to consider adding new material.

The purchases of new Atex disk drives and the upgrade of Atex software would be delayed. This would increase the likelihood of system failure which would disrupt the Court's opinion process. As mentioned in Justice O'Connor's statement, the Atex computer system supports all of the work related to the drafting and printing of the Court's opinions. Without a reliable system, the work of the Court is seriously jeopardized.

We would not be able to purchase the compact shelving that is necessary to eliminate the storage problems in the Library. Every year we add approximately 6,000 volumes to our collection thereby adding to a serious book storage problem. Compact shelving would enable the Library to make the best use of available space.

Question. Of the $1.4 million increase you are asking for in Salaries and Expenses, how much of this is for cost-of-living increases and other personnel costs?

Answer. Nearly 70 percent, $984,000, of the $1.4 million increase we are requesting is for cost-of-living increases and other personnel costs.

Question. You are asking for $160,000 to fund Atex computer improvements. $120,000 is requested to replace existing Atex disk drives and to upgrade Atex software.

-- Is this a major enhancement to that system?

-- Are you satisfied with the way the Atex computer supports your opinion process?

Answer. This does not represent a major enhancement to the Atex system. However, we must keep pace with technological improvements and avoid increasing and debilitating breakdowns of equipment. As computer systems age they become more susceptible to failure and more difficult and expensive to service. We are satisfied that the Atex system is accomplishing all tasks at present. The request for improvements is in anticipation of probable failures to the present system.

Question. $40,000 is requested to fund the conversion of Atex computer terminals to multi-purpose terminals. According to Justice O'Connor's statement, this will enable your attorneys to use their terminals for legal research of the Lexis and Westlaw databases, as well as for word processing.

-- How will the conversion save the Court money in the long run?

Answer. The one-time expenditure of $40,000 would save the Court $25,000 annually in rental costs for other machines that we have to use to do the same job.

Question. How do you feel your computer systems compare to that of an average law firm in Washington, D.C.?

Answer. Automation in law firms usually is applied to the use of word processing for document generation, automated billing processes and database research, e.g., Lexis or Westlaw. Other specialized or unique applications may be in use. Most law firms do not use automated typesetting for their document creation.

In contrast, the Supreme Court uses its computers for purposes which are both similar and different from those of the law firms. With our Hewlett Packard computer system, we provide a range of data processing which encompasses case tracking and docketing, integrated library system, finance and administration plus word processing in all of the offices of the Court outside the Justices' Chambers.

Also, we support the Chambers with word processing and automated typesetting to produce the opinions, using the custom designed Atex System. Research via both legal and non-legal data bases (Lexis, Westlaw and others) is vital to the opinion process.

Question. As a general matter, are their any reforms you would recommend to enhance the effectiveness and efficiency of our judicial system?

Answer.

Response of Justice O'Connor

This is a broad question and my response will be equally broad. The federal judicial system needs the establishment of some additional District Court judges and some additional appellate judges to meet the ever increasing caseloads. One alternative way to partially address this need would be to cut back somewhat on federal jurisdiction. For example, in my view Congress should consider eliminating diversity jurisdiction for "in-state" plaintiffs.

From my observations, it also appears desirable that Congress re-examine the Racketeer Influenced and Corrupt Organizations Act (RICO) with an eye toward narrowing somewhat the sweeping coverage of those provisions.

More importantly, there is a need to adequately fund the federal courts for the necessary staff and equipment to enable them to perform their role in our Constitutional system.

Question. In your view, how will implementation of the sentencing guidelines impact the judicial system?

Answer.

Response of Justice O'Connor

In my view, implementation of the new federal sentencing guidelines will result in an appeal in almost every case in which a guideline sentence is imposed, until all the possible legal challenges have been made and resolved. Eventually the system may stabilize, but for a number of years there is likely to be an increase in appellate review attributable to implementation of the guidelines.

Question. Last week, in testimony before the House, Chief Justice Rehnquist warned that without a pay raise for federal judges, "we are going to see more resignations from the bench, more damage to the morale of those judges that remain and more difficulty in recruiting new judges."

-- What are the statistics on resignations?

-- Has there been any difficulty recruiting new judges?

Answer. Reproduced below is Table 8 from Simple Fairness: The Case for Equitable Compensation of the Nation's Federal Judges, which outlines the recent history of departures from the bench. Simple Fairness is a report submitted to the 1988 Commission on Executive, Legislative, and Judicial Salaries by the Committee on the Judicial Branch of the Judicial Conference of the United States.

TABLE 8

CIRCUIT AND DISTRICT JUDGE DEPARTURES BY YEAR

Year	Number of Resignations	Year	Number of Resignations
1958	0	1974	7
1959	0	1975	2
1960	0	1976	3
1961	1	1977	1
1962	0	1978	4
1963	1	1979	2
1964	0	1980	3
1965	0	1981	3
1966	0	1982	3
1967	1	1983	3
1968	0	1984	7
1969	0	1985	5
1970	2	1986	4
1971	0	1987	7
1972	0	1988	5
1973	1		

Notes:

- Departures include resignations before retirement as well as retirements from office under 28 U.S.C. Sec. 371(a). Judges who retire under 28 U.S.C. Sec. 371(b) by electing senior status are not included in these figures.

- Figure for 1988 is estimated for the entire year based on three resignations as of August 1988.

The Court does not have a role in the selection of Judicial Officers and therefore we have no first hand knowledge of the difficulty in recruiting new judges. Anecdotally, we have heard that the Department of Justice has not been able to attract some of its first, second and third choices to federal judgeships.

CARE OF THE BUILDING AND GROUNDS

STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

PREPARED STATEMENT

Senator HOLLINGS. We are pleased to have Mr. George White, Architect of the Capitol. Mr. White, we have your statement in support of the $5 million amount. It will be included in its entirety in the record, and you can highlight it at as you wish and tell us about the bookcases, in particular.

[The statement follows:]

STATEMENT OF GEORGE M. WHITE

I am pleased to appear before the Committee to present the fiscal year 1990 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

I thought it might be appropriate, if it is agreeable, Mr. Chairman, to present a brief summary of the request and then answer any questions that you may have concerning the detail.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1990, we have requested a total appropriation of $5,714,000. This represents a net increase of $3,583,000 over the total of $2,131,000 for 1989. The net increase of $3,583,000 is represented by increases to the base in the amount of $153,000, and non-recurring projects totalling $3,430,000.

Increases requested are: $66,000 for mandatory increases, including within-grade salary advancements authorized by law; $20,000 for payment to the Federal Employee's Health Benefits Fund; $10,000 for increased contributions to employees' retirement funds; $4,000 to offset increased costs due to inflation for goods and services procured for two annual recurring maintenance items, the exterior pointing and caulking program and general annual repairs; $3,000 for communications services; and $50,000 to initiate an annual asbestos abatement program in the Supreme Court Building.

Three nonrecurring items are requested: the installation of automatic controls, for elevator no. 2, the cost of which is $175,000; structural repairs to the exterior terraces and stairs, $2,415,000; and $840,000 for the replacement of PCB transformers in the Supreme Court Building.

That concludes my statement on the needs for fiscal year 1990 for the Care of the Supreme Court Building and Grounds.

I would like now to present a summary of another item, the construction of an office building for the Judiciary.

Judiciary Office Building Development Act

Public Law 99-229, approved December 28, 1985 authorized the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice of the United States, to study such alternatives for the construction of a building or buildings on Squares 721 and 722 adjacent to Union Station to house the Administrative Office of the United States Courts, related judicial activities and other such tenants that may be appropriate. Options for financing the construction, including non-Federal sources, were also to be studied.

Public Law 99-349, approved July 2, 1986 appropriated $1,300,000 to the Architect of the Capitol for the authorized study.

An Architectural Consultant and an Economic Consultant were hired to assist in the study. The Report to the Congress, as required by Public Law 99-229, was prepared and transmitted to Congress on August 10, 1987.

In that Report, we recommended that a public-private arrangement be authorized whereby the building would be constructed by a private developer with the Federal Government as a major tenant. Title to the land, which is part of Capitol Grounds, would remain in the Government, with the building reverting to Federal ownership in 30 years or less. No additional apptopriated construction funds would be required.

Pursuant to that Report, a bill, S. 1934, was introduced December 8, 1987, to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union Station to house offices for agencies in the Judicial branch, and for other purposes. The bill, S. 1934, passed both houses of Congress and was signed into law October 7, 1988 (Public Law 100-480). This law is titled the "Judiciary Office Building Development Act."

This Act provides for a process whereby the five alternate proposals that were selected pursuant to Public Law 99-229 were revised by the five original developers and resubmitted to meet certain new requirements and then reexamined. The process is complete. Based on the revised proposals, a preferred design was submitted to the Chief Justice, pursuant to the provisions of Public Law 100-480, and he has approved the design. The next step in the selection process, submission of this recommendation to the newly created Commission for the Judiciary Office Building, has also been completed. Finally, a provisional selection of a developer-architect team has been made and announced. The selected team consists of Boston Properties and its architect Edward Larrabee Barnes. Negotiations have begun with the goal of reaching a mutually satisfactory agreement within two to three months.

Public Law 100-480 also provided that the balance of the $1,300,000 provided by Public Law 99-349 to carry out the provisions of Public Law 99-229 be transferred to an account under the Architect of the Capitol to provide for design review, construction inspection, contract administration and other related project costs. That account has been established and the funds, approximately $645,000, have been transferred.

At this time, Mr. Chairman, I feel it appropriate to mention that Public Law 100-480 will provide office space for the Judiciary on a reimbursable basis in the form of rent. The rental rates for the Federally occupied portion of the building will be substantially below market rates. In effect, the value of the land that the Government furnishes is the primary basis for a low cost project and therefore reduced rental rates. The rental cost is intended to be paid for in the same way as the Judiciary does now for leased space. However, based on the economic assumptions for construction of this new building, that rental cost will range below market rates, thus achieving savings to the Government, with the final result that, within 30 years, title to the building reverts to the government. As these rental costs must be provided for, however, appropriations for leasing the space will have to continue to be provided for in future budgets. Our present schedule provides for 90% occupancy and initial rent payments in July 1992, assuming execution of a development agreement no later than July 1989.

That concludes my overall statement, Mr. Chairman. I shall be pleased to answer any questions on the fiscal year 1990 budget request or the construction of an office building for the Judiciary that you or the Committee may have.

LIBRARY BOOKCASES

Mr. WHITE. Well, the bookcases are really a minor cost item, and the building will not need a change to it in order to accommodate those. They have been placed in positions that will not require that.

TERRACE STRUCTURE

So that really isn't a cost item of any significance. The two basic significant cost items are the replacement of the PCB transformers and the refurbishing, I will call it, of the terraces, which are structurally in bad condition. They haven't been touched since 1935, and we just discovered by accident last year that there was deterioration underneath, when we made an effort to put some planters on the top of the terraces to prevent automobiles from coming up there.

We looked underneath, which we would not ordinarily do, and found deterioration in the reinforced concrete, both in the spalling of the concrete and in the rusting of the reinforcing rods. It is a major problem, and we are asking for a large amount of money for that this year, which is the first of a 2-year request. That is $2.5 million in round numbers.

We think it will cost almost $5 million, but that is on the basis of the visual inspection that we were able to do. When we open it up, we may find it a rather difficult problem. We hope not.

So those are the two major items. The rest of the items are simply inflationary increases, basically, and then I can report to you also with regard to the Judiciary Office Building, if you would like.

Senator HOLLINGS. Sure.

JUDICIARY OFFICE BUILDING

Mr. WHITE. We are in negotiation now with the developer/architect team that is the provisional winner of the competition. I say provisional only because we reserve the right to go to someone else if we can't agree to a proper financial arrangement, but that looks like it is happening very, very readily. As a matter of fact, there are negotiations taking place in my office right now; we meet every Wednesday in order to implement this in a hurry.

Senator RUDMAN. Where is that building going, again?

Mr. WHITE. That is going just east of Union Station. Just to refresh your recollection for a moment, it is an arrangement whereby the Government is putting in the land; the developer is borrowing the money from the private sector to construct the building; and then we will lease the building back from him. Title to the land remains in the Government; title to the building reverts to the Government in 30 years or less, and so that the amount of money that we are paying in amortization and interest is paying our own mortgage for our own building, like our own houses.

It seems to be working quite well. I had meetings in New York with the money lending people. We had a series of presentations made by everything from insurance companies to a Swiss bank about wanting to lend money and various arrangements and various features; some education, I might say, as far as I am concerned. But we are sort of in the real estate business in this proposition, and the law, as you may recall, has made our office a sort of a legislative branch GSA.

AOC AS LEASING MANAGER

I am leasing the building from the developer and then subleasing to the Judiciary in the form of the Administrative Offices of the Courts, et cetera, and then about one-third of the building will be leased to others. The law provided that it may be leased to legislative branch support activities. No Members of the House or Senate or committees or staffs may go over there, so that it will not become another office building as was apparently the thought behind that, and then, if not legislative branch, then executive branch, and if not executive branch, private sector. That is all provided for in the law.

The executive branch will, I am sure, take all we can give them in the form of leased space through GSA. I am in negotiation with them now.

Senator RUDMAN. What is the approximate cost of this building to the Government?

Mr. WHITE. The approximate cost of the whole project is in the neighborhood of $130 million.

Senator RUDMAN. How many square feet will be in the building itself?

Mr. WHITE. It will be just under 1 million square feet.

Senator HOLLINGS. How much a square foot do we pay now, $130?

Mr. WHITE. About that.

Senator HOLLINGS. It has gone up, hasn't it?

PARKING SPACES

Mr. WHITE. Yes; and it keeps going up. Bear in mind that we are also providing in the building for 750 car spaces. There are approximately 500 cars parking on those lots right now, so we are replacing those with interior parking, and we will have an additional parking for the occupants of the building. I might say that all of this will come back to you fairly soon now in the form of appropriations needed by the Administrative Offices of the Courts in order to lease their portion of the building.

Senator **Hollings.** At the outset?

Mr. **White.** Yes; and I might say in that regard that the rents will be, it appears now—they are not final yet—will be in the $30 range per square foot per year, and we think that that will prove to be less than market even now for comparable space, but even though it is comparable to the market space now, that rent will be fixed for 30 years, so that it will be very inexpensive 10 or 15 years from now.

Of course, the portion of the rent which is associated with building maintenance will, of course, go up. But the basic cost, which is amortization and interest on the loan, will remain constant during the entire life of the mortgage.

That is where we stand. We will be back to you soon informally with some more information so that we can receive some guidance; we will need guidance.

Senator **Hollings.** When do you think? What is soon, this year?

Mr. **White.** Oh, yes. By July.

Senator **Hollings.** By July. All right.

JUDICIARY OFFICE BUILDING COMMISSION GUIDANCE

Mr. **White.** There is a commission, you know, Judiciary Office Building Commission, which was established by law, and we, of course, are working under their guidance and direction.

Senator **Hollings.** Do you have any questions, Warren?

Senator **Rudman.** None. Thank you, Mr. Chairman.

Senator **Hollings.** Well, we thank you very much.

Mr. **White.** Very well.

Senator **Hollings.** Nice to see you, sir. Do you have anything in addition?

Senator **Bumpers.** No; I have no questions, Mr. Chairman.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Hollings.** We will submit the balance of the questions for your response for the record.

[The following questions were not asked at the hearing, but were submitted to the Architect of the Capitol for response subsequent to the hearing:]

Questions Submitted by Senator Ernest F. Hollings

Question. One of the three nonrecurring funding items you are requesting is $175,000 for the installation of automatic controls for one of the Supreme Court elevators. Can you tell us why this is desirable?

Has the lack of these automatic controls caused any significant problems for the occupants of the building?

Answer. There are eight elevators in the Supreme Court building. The elevators were installed with manual controls, therefore requiring attendants to operate the equipment. Elevator Nos. 4 and 6 were subsequently modernized with automatic controls to allow operation by the general staff. Elevator No. 4 serves all five floors while Elevator No. 6 provides service to all except the top floor.

During normal building hours, attendants are used for the operation of Elevator No. 2, 4, and 8, since they also assist with security and visitor control. Elevator Nos. 2 and 4 are located in the west public portion of the building. When the building is closed, Elevator No. 4 becomes the principle means of vertical transportation since it serves all floors and is equipped with automatic controls. When Elevator No. 4 is out of service, it is disruptive to building activities and also requires the assignment of an attendant to one of the manually controlled elevators. To eliminate the dependency on Elevator No. 4, it is recommended that Elevator No. 2 be equipped with controls to allow automatic operation.

No significant problems have been experienced by the occupants of the building. However, vertical transportation delays are experienced especially for those attending evening functions or when Elevator No. 4 is out of service.

Question. How much of the new Judiciary Office Building will be occupied by the Judiciary? Who else will occupy the building?

Answer. Approximately 67 percent of the building will be occupied initially by the Judiciary. The remainder of the building will be leased to other Federal agencies. Legislation prohibits congressional or committee staffs from occupying the building. However, Congressional entities such as the Office of Technology Assessment or the Congressional Budget Office could use the space under the statute.

Question. Are you pleased with the way the new Judiciary Office Building has proceeded so far? Do you anticipate any significant problems or delays?

Answer. We are pleased with the progress of the new building. A developer-architect team has been selected. Negotiations for a final agreement are underway and should be completed by mid summer. The current schedule calls for occupancy during the summer of 1992. We do not foresee any significant problems or delays.

Question. You have requested $2,415,000 for structural repairs to the terrace areas and stairs. Are there any safety concerns involving the existing structures? What is the urgency of the proposed repairs?

Answer. During fiscal year 1988, when the deteriorated condition of the terrace areas was discovered, temporary measures were taken to reduce the chance of a possible major failure. Emergency repairs consisting of bracing the supporting structure in the vicinity of the steps by means of steel pipe shores were made. Access to the rest of the terrace areas by building occupants and visitors has been prohibited as a safety precaution.

To insure the structural integrity of the terrace areas permanent repairs must be made. Without these permanent repairs the problem will only get worse.

Question. You have requested $840,000 to replace PCB transformers—is this required by law? Is there a safety concern with the PCB transformers?

Answer. In recent years a determination has been made on the health hazards associated with exposure to oxidized (burned) PCB products. The Environmental Protection Agency (EPA) published regulations (40 CFR Part 261) in the Federal Register on July 17, 1985, concerning the use, repair, and disposal of transformers containing PCB's. EPA has banned the use of PCB-filled network transformers with secondary voltage of 480 volts because of higher fire hazards associated with them. Transformers of this type must be removed from service by October 1, 1990.

The transformers at the Supreme Court are of the 120/208V secondary distribution system type. They are not considered "high voltage" transformers by the standards set by EPA and are not required to be replaced by the regulations. It is recommended, however, to replace all primary transformers containing PCB liquid due to the concern of potential health hazards to building occupants and to visitors. Also, the age of these transformers warrants their replacement.

SUBCOMMITTEE RECESS

Senator HOLLINGS. We will meet again on Thursday, May 18 at 10 o'clock, when we will hear the Federal Communications Commission.

[Whereupon, at 10:38 a.m., Wednesday, May 10, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, May 18.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, MAY 18, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, and Rudman.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF DENNIS R. PATRICK, CHAIRMAN

ACCOMPANIED BY:

ALAN R. McKIE, DEPUTY MANAGING DIRECTOR
MARILYN McDERMETT, ASSOCIATE MANAGING DIRECTOR FOR OPERATIONS
PETER PITSCH, CHIEF OF STAFF
LEX FELKER, CHIEF, MASS MEDIA
JERRY BROCK, CHIEF, COMMON CARRIER
RALPH HALLER, CHIEF, PRIVATE RADIO
RICHARD SMITH, CHIEF, FIELD OPERATIONS
THOMAS STANLEY, CHIEF ENGINEER
DIANE KILLORY, GENERAL COUNSEL
JOHN HARING, CHIEF, PLANS AND POLICY
MAUREEN PERATINO, ACTING DIRECTOR, PUBLIC AFFAIRS
JIM McCORMICK, ASSOCIATE MANAGING DIRECTOR FOR INFORMATION MANAGEMENT

OPENING REMARKS

Senator HOLLINGS. This morning, the subcommittee will consider the fiscal 1990 budget of the Federal Communications Commission. This is the 11th hearing we have had this year, which is five more than we were able to hold last year. We plan at least one more hearing on the State Department's property and security activities when the new Under Secretary for Management is confirmed and appointed.

The FCC is requesting $109,831,000, an increase of $10,218,000 over the 1989 appropriation. It will provide for the restoration of 40 full-time equivalents and no new positions. A major portion of the increase, $2,608,000, is for additional or replacement automation capabilities. Appearing on behalf of the Commission is Dennis R. Patrick, the Chairman, who is accompanied by Alan McKie, the Deputy Managing Director; Marilyn McDermett, the Associate Managing Director for Operations and the chiefs of the various bureaus.

PREPARED STATEMENT

Senator HOLLINGS. Mr. Patrick, we welcome you to the committee. Your statement will be included in its entirety in the record, and you can highlight it as you wish or deliver it, either way.

Mr. PATRICK. Thank you, Mr. Chairman. I understand that you may have some time constraints, so in the interest of time, I will summarize some of the highlights of my statement and ask that this written oral statement also be submitted for the record, because it does make some points in addition to the written statement that we previously submitted.

Senator HOLLINGS. It will be included.

[The statement follows:]

STATEMENT OF DENNIS R. PATRICK

Mr. Chairman and members of the Committee, I appreciate the opportunity to review with you the Federal Communications Commission's Fiscal Year 1990 Budget Estimates. With me today are senior staff members. I will introduce them, if and when they are called upon to answer questions.

In contrast to other regulatory agencies whose missions are static or shrinking, our workload is continually increasing, a reflection of the dramatic growth in telecommunications generally, and the demand for new uses of radio in particular. But much more can and should be done in the U.S., and that will require an active role by the Commission. Continued pricing reform, adoption of incentive-based regulation, and relaxation of the divestiture restrictions on the regional Bell telephone companies can foster more efficient management and innovation by telephone companies, and reduce American business' telecommunications costs.

Likewise, the Commission must build on its record of accomplishment in managing the radio spectrum. Better inventory management, lower labor costs, prevention of theft, and energy savings are advantages American business enjoys from high quality cellular, paging, satellite data and location services. But a variety of new spectrum uses are pending at the Commission. Most notable is high definition TV. A proper consumer-oriented approach to high definition TV could open up enormous opportunities for commercial and consumer applications of high resolution video systems.

IMPACT OF FY 1989 BUDGET

We are sensitive to the constraints placed on the Congress by the necessity to reduce the federal deficit. Nonetheless, I believe the $99.6 million FY 1989 appropriation has seriously impeded the Commission's ability to carry out its responsibilities under the Communications Act of 1934. As I am sure you know, the Commission's budget is very personnel intensive. In FY 1989, over 80% of our appropriations will be spent for personnel compensation and benefits. An additional 15% of our appropriations is spent for totally non-discretionary expenses, such as rental of office space. Of the five percent remaining, the Commission must cover all of the partially discretionary cost of equipment, printing, travel, supplies, maintenance, furniture, etc.

While our FY 1989 appropriation is the same as FY 1988, this amount must cover many fixed cost increases, such as pay raises and health benefit increases. We actually began this fiscal year on October 1, 1988, with a $5 million deficit!

MEASURES TO DEAL WITH DEFICIT

To cover this shortage, we have struggled with some very difficult choices. First, on October 7, 1988, I implemented a hiring freeze. Although the Commission has been authorized 1,889 full-time permanent employees, the impact of the FY 1988 budget reductions had already reduced our staffing levels to 1,800 FTPs. With the hiring freeze and "early out" authority obtained from OMB, we anticipate that by the end of this fiscal year, we will have about 1,620 full-time permanent employees.

Next, we reduced, still further, all other operating accounts to an absolutely bare minimum. For example, we "zeroed out" all technical equipment and vehicle purchases, reduced our ADP equipment purchases by 75% and turned back some leased vehicles.

Finally, even with these drastic reductions, we still had a shortfall of $1.4 million. This can only be offset by furlough days for all Commission employees. Because of the adverse impact on the public of closing the agency for five days, we asked OMB for a supplemental to cover this shortage. This amount is included in the President's Budget Request.

The Commission has continued to maintain a very tight rein on our expenditures and we have been able to reduce the shortage to $495,000 or two furlough days. While we have reduced the compensation requirements since requesting the pending budget supplemental, without the additional funds, we will have no alternative but to close the agency and to furlough all of our employees for two days.

There are:

I. SERVICE IMPLICATIONS

With tne hiring freeze, early out, and attrition, we have lost a significant number of employees. Given the press of important policy demands and certain statutory mandates, backlogs have necessarily increased and speed of service to the public in some areas has decreased. This has occurred despite our best efforts to minimize the impact of our funding limitations.

II. ECONOMIC IMPLICATIONS

While major telecommunications policy issues capture the headlines, the Commission's day-to-day activities of licensing and enforcement have a direct and sometimes dramatic impact on the economic and social welfare of the Nation.

The speed and efficiency with which we license new and existing services has a direct impact on the American economy. Delays in licensing caused by staff shortages or lack of automation affect not only applicants, but adversely impact the GNP and reduce tax revenues.

I should add that this large FY 1989 shortfall occurred after a long period of steadily declining staff for the Commission. In the early 1980's we were authorized and received funding for over 2,000 full-time permanent employees. As I mentioned earlier, by next October we will be down to about 1,620 full-time employees on board, a reduction of nearly 20%.

This is very difficult to absorb for a small agency with increasing responsibilities.

In reviewing our budget situation it is apparent to me that we have reached a plateau. We can no longer accommodate telecommunications industry growth and demands without a modest increase in resources.

FY 1990 BUDGET REQUEST

Against this background, I would like to briefly summarize our FY 1990 Budget request. We propose a total of $109,831,000 and 1,889 full-time permanent positions. This represents an increase of $10,218,000 over our Fiscal Year 1989 appropriation. Almost one third of this increase is for fixed costs ($3.3 million).

PERSONNEL COSTS

We are not requesting any additional positions; but, we are requesting funds for an additional 40 FTEs to meet our most critical program requirements. Approximately $4.1 million represents funding required to meet increased personnel costs, including the partial annualization of the FY 1989 pay raise.

OTHER OPERATING COSTS

Another $2.6 million is for additional automated data processing equipment, software, production support and maintenance services to continue our productivity improvement activities. In the past, we have been able to maintain an acceptable speed of service in license process only through automation.

FEE COLLECTION PROGRAM/COMPETITIVE BIDDING

I would like to report on the progress of the Commission's Fee Collection Program. Since April 1, 1987, when the program was implemented, the FCC has collected over $100 million in fees (almost $58 million from Rural Cellular applications). These fees are deposited to the U. S. Treasury. This $100 million has helped reduce the federal deficit.

I would also like to support the competitive bidding proposal offered by the Administration and NTIA in the last session of Congress and reintroduced as S.170 in this Congress. This proposal will improve the speed of providing service to the public, will capture the value of the spectrum for the U. S. Treasury rather than for a private licensee, and collect an estimated $3.38 billion which will help reduce the federal deficit.

CONCLUSION

In conclusion, Mr. Chairman and Members of the Subcommittee, I would like to end on a more personal note. I would like to thank you for your input and interest in the Commission's affairs over the past two years of my Chairmanship. Admittedly, we haven't always agreed on specific policy objectives or the means to achieve them. Yet, I think in the end, overall, we we have shared a common goal to maximize the benefits the public can derive from America's communications facilities and services. I also believe decisions resulting from this constructive process have served the American people well. I wish you and my successor much success in this ongoing and worthwhile endeavor.

This concludes my oral statement. I would be pleased to answer your questions.

Mr. Chairman and members of the Committee, I appreciate the opportunity to review with you the Federal Communications Commission's Fiscal Year 1990 Budget Estimates. With me today are senior staff members, including: Alan R. McKie, Deputy Managing Director; Peter Pitsch, Chief of Staff; Gerald Brock, Chief of the Common Carrier Bureau; Alex D. Felker, Chief of the Mass Media Bureau; Ralph Haller, Chief of the Private Radio Bureau; Diane Killory, our General Counsel; Richard Smith, Chief of our Field Operations Bureau; Thomas Stanley, Chief Engineer; John Haring, Chief of the Office of Plans and Policy; Maureen Peratino, Acting Director of the Office of Public Affairs; Jim McCormick, the Associate Managing Director for Information Management and Marilyn McDermett, the Associate Managing Director for Operations.

In contrast to other regulatory agencies whose missions are static or shrinking, our workload is continually increasing, a reflection of the dramatic growth in telecommunications generally, and the demand for new uses of radio in particular. The telephone network is a crucial component of the United States' infrastructure. The promotion of a state-of-the-art telecommunications system is vital to American consumers and businesses alike. Recent telecommunications reforms have made U.S. companies more competitive in global markets. This fact more than any other explains the recent interest in telecommunications reform in other countries. But much more can and should be done in the U.S. and that will require an active role by the Commission. Continued pricing reform, adoption of incentive-based regulation, and relaxation of the divestiture restrictions on the regional Bell telephone companies can foster more efficient management and innovation by telephone companies and reduce American business' telecommunications costs.

Likewise, the Commission must build on its record of accomplishment in managing the radio spectrum. Better inventory management, lower labor costs, prevention of theft, and energy savings are advantages American business enjoys from high quality cellular, paging, satellite data and location services. But a variety of new spectrum uses are pending at the Commission. Most notable is high definition TV. A proper consumer-oriented approach to high definition TV could open up enormous opportunities for commercial and consumer applications of high resolution video systems.

During the past eight years, we have been able to accommodate this increased workload with a considerably smaller staff by employing proven management techniques such as management by objectives and through greater use of automation. We must, however, request a budget supplemental for FY 1989 and an increase in FY 1990 if we are to continue these critical activities.

IMPACT OF FY 1989 BUDGET

We are sensitive to the constraints placed on the Congress by the necessity to reduce the federal deficit. Nonetheless, I believe the $99.6 million FY 1989 appropriation has seriously impeded the Commission's ability to carry out its responsibilities under the Communications Act of 1934. As I am sure you know, the Commission's budget is very personnel intensive. In FY 1989, over 80% of our appropriation will be spent for personnel compensation and benefits. An additional 15% of our appropriation is spent for totally non-discretionary expenses, such as rental of office space. Of the five percent remaining, the Commission must cover all of the partially discretionary cost of equipment, printing, travel, supplies, maintenance, furniture, etc.

While our FY 1989 appropriation is the same as FY 1988, this amount must cover many fixed cost increases, such as pay raises and health benefit increases. We actually began this fiscal year on October 1, 1988, with a $5 million deficit!

MEASURES TO DEAL WITH DEFICIT

To cover this shortage, we have struggled with some very difficult choices. First, on October 7, 1988, I implemented a hiring freeze. Although the Commission has been authorized 1,889 full-time permanent employees, the impact of the FY 1988 budget reductions had already reduced our staffing levels to 1,800 FTPs. With the hiring freeze and "early out" authority obtained from OMB, we anticipate that by the end of this fiscal year, we will have about 1,620 full-time permanent employees.

Next, we reduced, still further, all other operating accounts to an absolutely bare minimum. For example, we "zeroed out" all technical equipment and vehicle purchases, reduced our ADP equipment purchases by 75%, turned back some leased vehicles and disconnected some telephone lines, reduced our travel accounts by 46%, supply accounts by 24%, library accounts by 39%, training by 60%, and printing accounts by 14%. We eliminated all station changes in the field. We deferred purchase of the optical image system for Dockets.

Finally, even with these drastic reductions, we still had a shortfall of $1.4 million. This can only be offset by furlough days for all Commission employees. Because of the adverse impact on the public of closing the agency for five days, we asked OMB for a supplemental to cover this shortage. This amount is included in the President's Budget Request.

The Commission has continued to maintain a very tight rein on our expenditures and we have been able to reduce the shortage to $495,000 or two furlough days. The $900,000 savings occurred primarily because more employees took advantage of the "early out" program than were projected and because more employees were on leave without pay or shortened their work schedule. While we have reduced the compensation requirements since requesting the pending budget supplemental, without the additional funds, we will have no alternative but to close the agency and to furlough all of our employees for two days.

SERVICE IMPLICATIONS

I would like to point out that with the hiring freeze, early out, and attrition, we have lost a significant number of employees. Given the press of important policy demands and certain statutory mandates, backlogs have necessarily increased and speed of service to the public in some areas has decreased. This has occurred despite our best efforts to minimize the impact of our funding limitations on our public service. We simply have not had the funds necessary to maintain our speed of service in processing applications.

ECONOMIC IMPLICATIONS

While major telecommunications policy issues capture the headlines, the Commission's day-to-day activities of licensing and enforcement have a direct and sometimes dramatic impact on the economic and social welfare of the Nation.

The speed and efficiency with which we license new and existing services has a direct impact on the American economy. Delays in licensing caused by staff shortages or lack of automation affect not only applicants, but adversely impact the GNP and reduce tax revenues.

For example, we estimate that the one year reduction of $5 million in our FY 1989 appropriation, if continued in out years, could reduce the present value of federal tax revenues by roughly $53 million, producing a net revenue loss of approximately $48 million. This is the result of the delays in processing applications in the mass media, common carrier and private radio services because of the hiring freeze, early-out program and resulting staff shortages. Even if these funding constraints are for only one year, at least $13 million in tax revenues will be lost.

I should add that this large FY 1989 shortfall occurred after a long period of steadily declining staff for the Commission. In the early 1980's we were authorized and received funding for over 2,000 full-time permanent employees. As I mentioned earlier, by next October we will be down to about 1,620 full-time employees on board, a reduction of nearly 20%.

In reviewing our budget situation it is apparent to me that we have reached a plateau. We can no longer accommodate telecommunications industry growth and demands without an increase in resources for staff, automation, technical equipment and fixed cost increases. To paraphrase a well known musical, "We've gone about as far as we can go."

I am confident you will agree that we must deal effectively with a host of new issues and concerns, which I mentioned earlier, if this nation is to prosper and be competitive in the international marketplace. Whatever course of action may be adopted to deal with these issues, the Commission will certainly play an important role and it will need adequate resources to respond.

FY 1990 BUDGET REQUEST

Against this background, I would like to briefly summarize our FY 1990 Budget request. We propose a total of $109,831,000 and 1,889 full-time permanent positions. This represents an increase of $10,218,000 over our Fiscal Year 1989 appropriation. Almost one third of this increase is for fixed costs ($3.3 million).

PERSONNEL COSTS

We are not requesting any additional positions; but, we are requesting funds for 40 FTEs to meet our most critical program requirements. If approved at the recommended level, the Commission will only be able to fund 1,783 FTEs, down from 1,941 in FY 1984 when we began counting FTEs. This rather dramatic decrease in staff has occurred during a time of increasing workload and responsibility. If the funds requested are not provided, there will be a further deterioration of licensing speed of service, a further reduction in critical enforcement activities, etc.

Approximately $4.1 million represents funding required to meet increased personnel costs, including the partial annualization of the FY 1989 pay raise, annualized increased cost of FY 1988 health benefits, and increased cost of Federal Employee Retirement System (FERS) ($1.8 million), within-grade and merit pay increases ($714,000), and funding for 40 critical FTEs which were eliminated to meet the FY 1989 shortfall ($1.6 million).

OTHER OPERATING COSTS

Another $2.6 million is for additional automated data processing equipment, software, production support and maintenance services to continue our productivity improvement activities. In the past, we have been able to maintain an acceptable speed of service in license process only through automation. We must have additional funds for this automation effort if we are to maintain the productivity improvements realized through use of computers.

Additionally, $787,000 is requested for technical equipment; $685,000 for three major contracts, for cross-servicing our Payroll/Personnel system ($300,000) and for consolidation support ($385,000); $56,000 for purchasing and equipping our special monitoring vehicles; and $212,000 for additional domestic and Joint Board travel.

FEE COLLECTION PROGRAM/COMPETITIVE BIDDING

In closing, I would like to report on the progress of the Commission's Fee Collection Program. Since April 1, 1987, when the program was implemented, the FCC has collected over $100 million in fees (almost $58 million from Rural Cellular applications). These fees are deposited to the U. S. Treasury. This $100 million has helped reduce the federal deficit.

I would also like to support the competitive bidding proposal offered by the Administration and NTIA in the last session of Congress and reintroduced as S.170 in this Congress. This proposal will improve the speed of providing service to the public, will capture the value of the spectrum for the

U. S. Treasury rather than for a private licensee, and collect an estimated collection of $3.38 billion which will help reduce the federal deficit.

This concludes my prepared statement. I would be pleased to answer your questions.

BIOGRAPHY OF DENNIS R. PATRICK

Dennis R. Patrick has served as Chairman of the Federal Communications Commission since April, 1987.

As Chairman, Mr. Patrick directs the development of regulatory policies of the F.C.C., which encompasses domestic and international communications by radio, television, wire, satellite and cable. In addition, he administrates the daily operations of the Commission.

Chairman Patrick was appointed a Commissioner of the F.C.C. on December 5, 1983 and served in that capacity until appointed Chairman. Previous to that appointment he served for a brief period as Special Assistant to the Administrator of the National Telecommunications and Information Administration in the Department of Commerce. Prior to that he served as Associate Director of Presidential Personnel at the White House. During this time, from December, 1981 to October 1983, he was responsible for advising President Reagan and Senior White House staff members on presidential appointments to most of the federal independent regulatory agencies.

From 1976 to 1981, Mr. Patrick was a member of the Los Angeles law firm of Adams, Duque and Hazeltine.

A native of California, Mr. Patrick received his A.B. degree magna cum laude from Occidental College in 1973, where he was elected to membership in Phi Beta Kappa. He earned his Juris Doctor degree from the University of California at Los Angeles in 1976. During law school he served as a law clerk to the Honorable William P. Clark, then sitting on the California Supreme Court.

Chairman Patrick was born on June 1, 1951, in Los Angeles, California.

SUMMARY STATEMENT

Mr. Patrick. Let me, then, just summarize the points that I do make in the statement, Mr. Chairman. As you indicated, I do have the senior members of the staff of the Commission with us this morning, including our bureau chiefs, our general counsel, officers from our managing director's office, and we are prepared to answer in detail any questions that you may have.

I think it is fair to say that the greatest challenge that my successor at the Commission is going to face goes directly to the business of this committee and the issues we are here to address this morning, and that is the budget question.

The FCC, as distinguished from any other agencies in Government, is facing increasing responsibilities and increasing workload as a result of the fact that technology is also always creating new ways to exploit and utilize radio spectrum as a result of which, we have seen our responsibilities increasing dramatically as various technical issues, and as policy issues are presented to us.

FISCAL YEAR 1989 BUDGET DEFICITS

Of course, Mr. Chairman, you, better than most in the Congress, are very familiar with the complexity and arrangement of those issues, as you have considered them in your capacity at the Commerce Committee. Let me just note for the record that in 1989, we received an appropriation of $99.6 million, which was essentially what we had received in 1988.

However, in 1989, this fiscal year, we are facing about a $5 million increase in costs as a result of certain uncontrollable cost increases of personnel, et cetera. So we effectively started this year with a $5 million deficit.

We have attempted to deal with that deficit by very drastic actions, very drastic cuts. We have imposed a hiring freeze; we sought and secured early out authority by which certain senior members of the staff have chosen to retire, which obviously helped on the dollar side, but has hurt us in terms of manpower and our capacity.

We zeroed out a number of the accounts, the "Technical equipment" account, our "Vehicle" account. We have had to forego very critical equipment purchases and taken related actions to try to deal with this deficit problem at the Commission.

FISCAL YEAR 1990 BUDGET REQUEST

We have brought the deficit down to about $500,000 now. There is a supplemental pending in the administration's request that would go toward covering that deficit. As you indicated, our budget request or the administration's budget request for 1990 is approximately $109.8 million, which would include approximately a $10 million increase over the amount that we had received in 1989, and as you also indicated, this money is to be used to cover certain uncontrollable cost increases amounting to about $3.3 million and the remainder used to essentially restore cuts that we have suffered in the past, especially in the equipment area, including the ADP automation area, and also to provide us with some additional personnel, which is very critically needed.

I might note on the personnel side that we are now at a personnel force level of about 1,693 full-time positions, whereas at the beginning of this year, we were 1,800, and, in fact, when I joined the agency some several years ago, we were at about 2,000. So both in terms of personnel and in terms of our budget, at least in real terms, we have been suffering cuts of a very dramatic nature over the years.

At the same time, responsibilities at the Commission are increasing. I think we are at a point now where, unless we receive some modest increase in the allocation or the appropriation to the Commission, our capacity to execute our function and fulfill our responsibilities under the Communications Act is going to be substantially compromised and hence, although we are not insensitive to the fiscal restraints that the entire Government is subject to, we have requested this modest increase.

On a personal note, Mr. Chairman, let me say that this is probably my last hearing with you. As you know, I have indicated to the President that I am going to resign upon the confirmation of my successor. That too will be handled by your other committee, and I just wanted to say that whereas we obviously have not always agreed on issues, I have, in fact, enjoyed working with you, and I think that the process, while at times difficult, has, in the end, well served the public interest. I just wanted to make that observation as I leave, Mr. Chairman.

Senator HOLLINGS. Well, you are very generous. I appreciate working with you. Our fundamental difference is one of administration generally: deregulate, deregulate, deregulate, get rid of the Government. We have always conceived the FCC to be the administrative arm of the Congress and its policies. Here we set policies for you to administer, and then we look around over there, and you are getting rid of all the policies.

That has been the big difference. But personally, I have enjoyed working with you. I wish you well.

In 1980, you had around 2,153 employees. Now you are down to 1,600, and instead of a budget of about $76 million you need over $100 or $109 million.

And yet the work, someone was saying, has gone down. You have eliminated the Fairness Doctrine and cross ownership and gotten rid of all the employees, like you say. You sort of disassembled it. So why do we need more money?

I understand. We have got high definition television; we have got the foreign trade, which I commend you for getting into with respect to the international competition. The FCC can be a wonderful instrument to play the game of comparative advantage in this economic war—you might as well call it the trade war. Comparative advantage is not water power or natural resources. It is Government, our competitors have used their Government. We don't have to use it in a blind or intransigent, traumatic fashion, but if they are antilicense and everything else, why should we expedite licensing of their products?

But in a general sense, can you elaborate for Senator Rudman and myself the new responsibilities of the FCC. Give us a better feeling of the new responsibilities you are taking on. As you are getting rid of some of these others, what other new ones do you take on?

NEW FCC RESPONSIBILITIES

Mr. PATRICK. Yes, Mr. Chairman; I would be glad to do that. I think that is an excellent question, because it is often observed that insofar as the Commission has so vigorously pursued policies of deregulation, how is it that responsibilities seem to be increasing, and the burden on the Commission being what it is, is very substantial.

The answer, of course, is that for every issue we resolve by removing Government involvement, two or three issues seem to take its place as a result of technology creating new opportunities to exploit radio spectrum. We have responsibilities today to regulate and deal with technologies that 10 years ago no one had heard of or even conceived of, an example of which is cellular licensing, a relatively new technology, and yet a technology that is enormously popular and has virtually exploded in terms of market response.

We have had to provide for the allocation of spectrum to this service and for the licensing of not one, but two providers of this service in every community. In the telephone area, certainly, we have moved in the direction of open entry and competition, and that has involved a great deal of regulatory involvement by the Commission in terms of moving us toward a fair and competitive market.

This complicated our work in the area of tariffs. As the competition becomes more intense, the conflicts that are often presented to the Commission among the competitors in terms of tariffs are multiplied.

Obviously, since 1984, we have been dealing with the effects of divestiture, which you and I have discussed in many other contexts, but I know that you agree with me that it has, in some ways, complicated the structure of the telephone market, and the Commission has had to deal with many implications of that fact.

The whole area of enhanced services, computer assisted communications services of various types, is an area that didn't really even exist several years ago, and yet we are now having to deal with it in terms of how it relates to the regulatory structure.

You very correctly observed that the telecommunications market is becoming increasingly globalized. The economics of providing telecommunications is very much involved in world economics and world or international trade questions. The Commission has responsibility for telecommunications as it relates to the international context, as well, and that whole area is exploding.

On the broadcasting side, whereas we have removed some of the rules in terms of content, if you will, we have been very active in terms of licensing new properties. There has been a vast increase in the number of television stations and radio stations that have been licensed in the past several years. We are also dealing with the whole question of direct broadcast satellite, a new service that we are hopeful will provide a new source of programming to Americans soon. We have that issue.

We have the very important issue of HDTV. I don't want to belabor this too long except to say whereas, yes, we have generally pursued policies that involve deregulation, technology has created an extraordinary number of additional issues the Commission has had to deal with. I would say that the workload of the Commission today is substantially greater than it has ever been in the past.

REDUCED STAFFING IN FISCAL YEAR 1989

You mentioned personnel versus equipment. I don't think that the Commission needs to return to the personnel levels that we had 5, 6 years ago up around the 2,000 mark, but I do think 1,693 and the 1,620 personnel level that we anticipate we will be at by the end of this fiscal year are too low. We do need some additional full-time equivalent positions, and we are very much in need of some moneys to improve our ADP and computer, both hardware and software, capacities at the Commission.

NEED FOR TECHNOLOGY ENHANCEMENTS

Obviously, we are regulating a very technology-intensive industry, and we have to have some capacity to execute those functions effectively, and in a high-technology world, that does take some investment in technology. We desparately need those things. As I mentioned, our technical equipment budget has virtually been zeroed out this year. Our people in the field—we have Dick Smith here, who runs our field operation—are using incredibly antiquated field equipment to try to track interference problems and violations of our rules, et cetera, and they are dealing with licensees who have, needless to say, the state-of-the-art sort of equipment. So those are our problems.

Senator HOLLINGS. And there is a shortage of the spectrum. You know, your predecessor is running around here with a little gadget or something to take a poll on TV so people can answer back. That is very interesting. You know, Senator Rudman and I learned in the courtroom if you let them talk long enough, they usually come around to your way of thinking. [Laughter.]

Senator RUDMAN. Should we let Mr. Patrick go on for another half an hour? [Laughter.]

FISCAL YEAR 1989 SUPPLEMENTAL REQUEST

Senator HOLLINGS. That $500,000 in the supplemental, there is no trouble with that, is there? Can we take care of that with the money left over in the Fort Lauderdale project?

Mr. PATRICK. Yes.

Senator HOLLINGS. I don't want to play games with you.

Ms. McDERMETT. Four hundred thousand dollars.

Senator HOLLINGS. We need to take account of that and make sure we get it in that urgent supplemental, because we might be marking that up this afternoon.

MINORITY OWNERSHIP

With respect to minority ownership policies in the *Shurberg* case, we struck down a minority distress sale, and yet the legislative mandate is required to help minority ownership and even in the *Winter Park* court decision.

You sought reconsideration, yet why would you seek reconsideration for it when that is exactly what the legislative policy is?

Mr. PATRICK. Mr. Chairman, quite right, we have had two recent decisions in the area of minority preference policy. One, these are both decisions by the court of appeals. The court of appeals in the *Shurberg* case found that our distress sale policy was unconstitutional. A different panel of the same court found that our preference policies that we use in the licensing process were generally constitutional.

They reached those conclusions by and through an analysis and a discussion of the law which was very, very much inconsistent. What I urged my colleagues to do was to have the full court of appeals consider both cases so that we could have one consistent and coherent body of law to guide us in this area.

I do not believe that if we pursue only one-half of the question or only one of those cases as distinguished from both we are going to clarify what the law is in this case. So I suggested that we seek reconsideration in both cases and simply posit for the court all of the issues at once so that we can finally have some statement of the law that we are to apply in this area.

Senator RUDMAN. I just thought I would ask, is that being done? You said that is what you suggested to your colleagues. Is that being done?

Mr. PATRICK. No; the majority of the Commission, there are only three Commissioners. And my two colleagues voted to appeal only the *Shurberg* case and not to appeal the *Winter Park* case, which dealt with comparative preferences, whereas hopefully, that will give us some enlightenment.

My fear is that dealing with only one-half of the issues, we will continue to have some ambiguity as to what the Constitution says.

Senator RUDMAN. What was their rationale for that, because they liked the one case and they didn't like the other?

Mr. PATRICK. They liked the one case and they didn't like the other.

Senator RUDMAN. Figures.

TARIFF 12

Senator HOLLINGS. Jumping over to the AT&T, Mr. Chairman, you have the tariff 12. You have proceeded with an investigation now for a long investigation, and then you said, "File an amendment application for tariff," and then you go to investigation, and they keep collecting under that, "Apply for a tariff," and then they go again. This is what we had all during the seventies. We called it the breakdown of the FCC where it caused, frankly, the court to handle it. We tried our best to handle it over on this side, but I hope we don't get back into that situation again of investigation and amend the application, come back in, investigate, amend, keep on going and keep on collecting.

Those who would take issue with a particular tariff are never allowed their day in court, really.

Mr. **Patrick**. Mr. Chairman, I think that that is a legitimate point or at least it is something about which to be concerned, and I can assure you that we have no intention of allowing the investigation process to unduly delay the resolution of these issues.

In the case of tariff 12, we not only found the tariff on its face to be unlawful, but precisely out of a concern that this thing not go on forever, we went on to talk about what we believe to be the core underlying issues so that AT&T, when they came back and refiled the tariff, would have some guidance and we could get on with some resolution of this matter.

I have no intention of allowing the tariff/investigation process to go on forever, and even though this was an extraordinarily difficult and complex case that really goes to many of the key competitive issues that we are dealing with today, I think that we made a good-faith effort and did substantially move toward the resolution of the issues in that case.

But I understand your point; I don't want that to happen. I will try to avoid letting it happen.

Senator **Hollings**. Senator Rudman?

NORTHERN PACIFIC CABLE

Senator **Rudman**. Thank you, Mr. Chairman.

Chairman Patrick, I only have two questions. One concerns a point of interest in our State, but it has got a broad interest. It has a very serious trade reference within it. That has to do with the North Pacific Cable project that is before your Common Carrier Bureau.

The issue was that Pacific Telecom entered into an agreement that American companies would be given an opportunity to fully participate. There is actually only one American company that is capable of doing that worldwide, and that is Simplex, a well-known company doing a lot of cable business around the world. Simplex lost that bid to a British-Japanese competitor.

There are now some questions as to whether or not that bid is really the right bid and that that bid, may, in fact, be raised so that when it finally becomes an executed contract, it will not be on the terms on which the bidding was carried out. That is before the Common Carrier Bureau at this time. It is a fiberoptic cable contract. It has to do with Pacific Telecom landing license here in this country.

Where are we on that, and what is the Bureau looking at? Because that is a very vital trade issue.

Mr. **Patrick**. Senator Rudman, I agree. I am familiar with this case, and I do think it is an important issue. As you know, the Northern Pacific Cable grant, the grant of its conditional license to construct this private cable, was made conditional upon, among other things, American concerns having a reasonable opportunity to participate.

Senator **Rudman**. The words of the ruling were, "a fair opportunity to participate in the project."

Mr. **Patrick**. Fair opportunity to participate in the project. Sim[illegible] filed a petition with the Commission indicating that they [illegible]eve that they did have a fair opportunity. I have instructed the bureau to put that petition out for comment. We are soliciting comments at this time, and we will analyze it to determine whether or not NPC has met its obligations under our conditional license to ensure a fair opportunity for all American concerns.

So we are looking at it carefully. The bureau has not made a recommendation on that.

Senator **Rudman**. Well, we have also raised this with Secretary Mosbacher at a hearing we had. I think it just seems to us that, in this matter, it ought to be looked at very closely. Obviously, if it is legitimate and the American company is given a fair opportunity to compete and it was not able to compete, we understand that.

But if, in fact, the evidence indicates that there is a question about that, then I would hope that your bureau would look at that very, very closely, because it is just the kind of thing that we see over and over again. Although the latest trade figures are better than last month, I am not sure that is going to last, particularly with the strength of the dollar. It is kind of a catch 22. We get the good trade figures; the dollar gets very strong; you can almost anticipate that the trade figures will go in the other direction the following month. So when you have American companies competing legitimately, you just want to make sure that they are treated fairly. I think that is really all we can ask for.

Mr. **Patrick**. I agree. We will keep you posted on that.

HDTV

Senator **Rudman**. The second question is far more difficult, and I don't think we can get into a full discussion of it this morning, but it is the HDTV issue. The Commission has only a narrow part of, but there is a great debate going on in this country with some believing that it appears we ought to have what some call an industrial policy. That tends to be a pejorative word around here—at least in my political party, not necessarily the chairman's party. Others feel that it is really not simply HDTV at all; he who controls HDTV will control the semiconductor industry, and, therefore, control the whole panoply of very important industrial technology in the coming century.

The FCC has an important role here, and I would like you to just tell us a bit about it. Because you have got some interesting problems. You have got regulatory authority over terrestrial broadcasting and setting standards. You don't over the cable companies, I do not believe. Some think maybe you ought to have that because we ought to have some standardization.

It is also felt that maybe we ought to have an American HDTV standard in which American companies develop that standard, it is owned by the Government, issued by the FCC, and manufactured essentially in this country. What do you think about all that?

Mr. **Patrick**. Senator, as you indicated, this is an extraordinarily complex set of issues. It involves a wide-ranging set of concerns. Let me start my response by commenting on our particular role in the process. Because as you say, there are trade implications, obviously, Commerce implications, State Department concerns, et cetera.

I believe, all of that having been said, that the key issues in the resolution of the HDTV debate are, in fact, those issues pending before the FCC. Because as again you indicated, the key or one of the keys to the way this technology will develop is terrestrial broadcasting. It is much easier to put the cable community in the position to deliver a higher resolution form of video, and it is easier to deliver high resolution by satellite because in both cases, you don't have the same constraints in terms of radio capacity.

But in the United States, as distinguished from Japan, we have a terrestrially based over-the-air broadcast system, and so our challenge is to put broadcasters in a position to deliver some form of high resolution. That requires radio spectrum, additional radio spectrum, because you are communicating more information, transmitting more information, and it requires that we set a standard.

So to be very specific, the two issues are just those. How do we put terrestrial broadcasters in a position to deliver that signal? How do we find the additional spectrum for each of these stations so that they can deliver a higher resolution picture and what technical standard do we set for purposes of transmission?

Those are two very complex issues, because it is not clear where we will get the additional spectrum, and one has to make a judgment as to how much spectrum you want to give each station, which goes to how good you want the picture to be.

Essentially, although in my opinion this issue is often misanalyzed or at least not analyzed very precisely, it comes down to a question of tradeoffs. You have to tradeoff an amount of spectrum we devote against how good you want the picture to be against how much interference you want other broadcasters to suffer, against coverage areas, et cetera.

We are very actively engaged in trying to resolve those two questions. We have an advisory committee that we have appointed that has produced two excellent interim reports that we are utilizing. We hope to have the test center that has been set up by the broadcast community to begin testing in the fall so that we can begin to get some data on these systems, both objective and subjective data, and we are moving just as rapidly as we can to narrow the range of decisions so that we can eventually set a standard and make a decision with respect to spectrum allocation.

As far as the trade issues and all that, No. 1 it is a little bit outside my jurisdiction, but my thought is that if we can define the parameters, if we can get to the point of setting a standard and telling the industry, "OK, this is how much additional spectrum we have; this is how we are going to have to do it; these are our constraints in the United States," then at least American industry will have an opportunity to play in the game. They can step up to the plate and make their bid or make their proposals with respect to this technology, given those constraints.

Until we set the criteria, the industry really doesn't know what hoops to jump through, if you see what I mean.

Senator HOLLINGS. What is your timeframe on setting the hoops?

Mr. PATRICK. We would like to set a standard within the next year and a half.

Mr. FELKER. We are hopeful that we will be able to get the information from our advisory committee sometime during 1991 and then be in a position to set a standard in that timeframe. If I could just elaborate for one second.

Mr. PATRICK. Let me identify you for the record. This is Lex Felker, chief of our Mass Media Bureau and also the person that is really heading up our HDTV effort. He is extraordinarily knowledgeable on this issue.

Mr. FELKER. I think the Commission's decision to make terrestrial broadcasting sort of the centerpiece of our HDTV effort has really handicapped foreign efforts, because a number, as you no doubt know, in Japan and Europe, have been moving ahead on nonbroadcast media as the way to deliver HDTV.

When we made the decision that broadcasters were going to play a big role in this game, I think that put them back to square one in much the same position as many of the domestic inventers were, and I think right now, we are seeing a very active cat fight in this area, both from foreign and domestic firms. I have got high hopes that the American firms are going to play quite well in this game.

Senator RUDMAN. It is a very interesting issue, because you have got a situation here where if, in fact, you do promulgate a standard, I am told by I think the leading technical experts in the field that we are far ahead of the Japanese in the laboratory. We are way behind them in terms of development in applying that technology.

If you develop a standard for terrestrial broadcasting in this country—and I am not saying you ought not to; I think probably at this time, you made a very wise decision from many points of view, but if you adopt that and it becomes the U.S. standard for spectrum allocation and technology of transmission and the world market is on a different standard because of the media in which they transmit their information, then I submit to you that we have a very interesting trade problem in the sense that we will have a product that will be available to the U.S. users but will not be available or usable, typically, overseas. Since these same experts do believe quite convincingly that the semiconductor field depends on who dominates that market, then we have in one way created a market for ourselves.

I hope somebody is paying attention to that. This is an issue that Commerce and the FCC and others ought to be involved in. You know, I am delighted that the gentleman to my left is chairman of both this—well I am not delighted. I wish we were chairman, but—[Laughter.]—but since I don't have any choice in the matter, I am delighted that he is chairman of this subcommittee.

Senator HOLLINGS. You have spent a lot more time under me than we got under you. [Laughter.]

Senator RUDMAN. He is also chairman of the full Commerce Committee. I think this is something that the Congress can be very active in, because I think although the word industrial policy is a very pejorative term to the Republican Party, I think there are all kinds of industrial policies. When we are faced with what we are faced with, with HDTV, with due regard to people like Mr. Samuelson, who wrote an excellent piece in yesterday's Washington Post, the fact is that many believe that unless we are really ahead of this—the FCC, the Commerce Department, the Congress, all of us—come the 21st century, we will essentially be an assembler, and role to weigh the merits of the various agencies and programs within your jurisdiction and, within the constraints of the funds available, then make appropriations according to your own agreed upon priorities. It is, or should be, our role to do our very best to convince you that the Legal Services Corporation deserves to be high on your list of priorities.

Instead the majority comes to you again this year and lobbies you to cut our budget. In the face of overwhelming evidence that only a tiny fraction of the legal needs of America's poor are now being met, the Legal Services Corporation asks Congress for less money than it is spending today. In short, the majority declines to compete for your attention and support. I dare say that the majority is unique in such a position, and I am enormously grateful, Mr. Chairman, that you and your colleagues in both houses have thus far ignored them and have invited me to address this Committee.

It is disgraceful and outrageous that this Board would come to you with this budget request. The local programs that serve the poor throughout the country desperately need additional funds. But this Board has never even requested an inflationary increase, despite the fact that our own Corporation staff here in Washington received a cost-of-living increase as recently as January 1, 1989. This budget is a rhetorical irrelevance that has nothing to do with the reality of legal services today. There is not one word in this document about what our grantees do with the money we provide them, how many clients they serve, or the quality of their work. There is no word of praise or support. In fact, Mr. Chairman, the entire tone of the budget document submitted to you is one of suspicion and hostility toward the local programs. Why else would there be so much discussion of fraud and abuse when, despite spending $5 million a year for the past five years aggressively monitoring our grantees, the Corporation has found virtually no evidence of fraud or abuse by our programs? Of the two or three instances they cite as instances of rampant abuse, from more than 300 programs nationwide, almost all the irregularities were found and reported by the programs themselves, not by the Corporation's monitors. There simply is no justification for the tone or substance of this budget request.

Since the halcyon days of 1981 when the Legal Services Corporation was funded at $321 million, theoretically providing "minimum access" or two lawyers per 10,000 poor people, our grantees have sustained a loss in federal funding, adjusted for inflation, of about 40%. At the same time, more and more people are coming to us for help. And despite what the Chairman and the President would have you believe, private and other public funds and the redoubled voluntary efforts of bar associations, though invaluable, can never begin to make up for the significant loss of federal funding that our grantees have absorbed.

In state after state, recent studies have shown that the vast majority of the legal needs of poor people currently go unmet, even with increased state and private funding. In Maryland, for example, with a vigorous IOLTA program and strong private bar involvement, only 20% of the legal needs of the poor are served today; in Massachusetts the number is 15%, despite active private bar support and a state mandated program which directs filing fee surcharges to legal services; in North Dakota, fully 95% of poor people's legal needs are not being served. And still the majority of this Board has the audacity to come before you and ask you to cut our budget. That is outrageous, Mr. Chairman, and I urge you and your colleagues once again to reject their destructive efforts to reduce funding.

This budget would also destroy the state and national support centers, the National Clearinghouse for Legal Services, the regional training centers and computer assisted legal research services, all vital components of an effective and efficient delivery system. During the past four years the Congress has had to specifically earmark funding for these services to ensure that the Board majority would be obligated to see that they were provided. Nevertheless, the Board majority persists in its quest to destroy these programs. While some may excuse them as not hearing you, Mr. Chairman, I believe they are choosing to ignore you--all the more reason for you and your colleagues to continue to tell this Board, in the strongest possible terms, how you expect LSC funding to be spent.

Subtlety won't work with this Board, Mr. Chairman; just look at some of the actions of the Board majority in recent months. Beginning on January 4, 1989, all LSC-funded legal services programs received a letter from LSC President Terry Wear announcing that they would not receive a full year's grant from LSC. For the first time in its history and without full Board consideration, LSC's staff decided that it could not release full-year funding until it had received and reviewed the second part of each program's refunding application due March 3, 1989. Therefore most programs received a four-month grant (32 programs received two months funding and eight programs received only one month's funding).

In the past, LSC announced the awarding of its grants in December and programs received a full year commitment. This year LSC issued a press release on December 30 announcing this policy change and programs learned of it after January 1, which is of course after their program year has begun. No program had been warned that this policy change was in the works.

In addition, LSC staff imposed between seven and twenty-three new "special conditions" on each program. Most require some reporting to LSC; several required recipients to extensively document activities such as each use of (.e.g, phone call to) any national or state support center or regional training center. Many of these new grant conditions were poorly worded or lacked clarity. LSC staff offered differing and even conflicting interpretations when asked for clarification. Recipients were thus put into the position of agreeing to comply with requirements neither they nor LSC understood. Worse, many of the conditions posed real problems of compliance that were completely outside of the recipient's control.

For example, a number of recipients were required to fill Board vacancies by March 15 or, in several cases, by February 10, regardless of whether the appointing organization could meet these timetables. Under the McCollum amendment, a majority of the Board must be appointed by certain bar associations. (Similarly, clients are appointed by client groups.) Recipients do not control the appointment process of either. Many bar associations, like the California Bar on whose Board of Governors I have served, have established careful procedures for appointment which take five or six months to complete. Bar Associations cannot and will not immediately change their procedures to conform to some new request of LSC communicated in grant conditions that were heretofore unknown.

[There is an irony here that I can't help but mention. Last year the six-member majority almost adopted a provision that would have prohibited recipients from communicating about such vacancies or urging bars to make such appointments. This idea came up during consideration of the proposed governing body regulation which your committee has so wisely prohibited LSC from implementing.]

LSC staff also came up with a novel (indeed absurd) interpretation of the McCollum amendment declaring that a program was in violation whenever it had an attorney Board vacancy that brought the bar appointed members below 50% of the sitting Board. It did not matter whether the vacancy occurred because of circumstances over which the recipient had absolutely no control, such as the death or resignation of a Board member.

Unfortunately, these were not the only problems created by new and unprecedented grant conditions. Native American programs were required to reorganize their Boards, even through such programs had explicit waivers granted by LSC Presidents under Part 1607 and Section 1007(c) of the LSC Act. Other programs were told they were out of conformity with the Private Attorney Involvement requirements even though they had spent the required 12.5% and were in conformity with the regulation and recent LSC General Counsel opinions. One judicare program with no staff attorneys was informed that it had failed to spend 12.5% and must return over $60,000 to LSC by early February or have its grant reduced! Recipients with experienced executive directors recognized locally and nationally for their effective management and leadership were required to formally evaluate the executive director based on a report of some monitor who had never run a program and had no experience with non-profit organization governance.

The result of these actions was substantial program confusion and disruption. Some programs called emergency Board meetings to discuss the conditions. LSC officials were unable to explain to many programs why they received less than a four-month grant or exactly what some of these conditions required in terms of program compliance. LSC admitted that some of the conditions were vague or ambiguous, but refused explicit requests to issue clarifications to assist program understanding of what was being required. Recipients had until January 20 to sign without any change and return the grant document to LSC or face the loss of the February check. LSC refused to grant extension of this extremely short time between receipt in early January and January 20, despite the fact that LSC acknowledged that the conditions were subject to varying interpretations. Not only are these new grant conditions an affront to the law firms that have so ably served the poor, but the threat that checks would be stopped in

February if recipients did not sign without alteration appears to be illegal under sections 1007(a)(9) and 1011 of the LSC Act.

Let me now turn, Mr. Chairman, to an area which has caused equal if not greater disruption and chaos among our grantees. The most recent regulatory initiatives are unparalled in their intrusive and punitive intent in the history of this Board majority. If actually implemented, these changes will cause untold mischief and severely restrict legal services programs in their ability to provide high-quality legal services.

For example, at the end of January the LSC Board passed an extensive revision of the regulations governing legal services to aliens. While some of the changes actually improve upon the old regulation, the most significant change is one that is totally unjustified. The new regulation forbids legal services programs from serving, for a period of five years, aliens who receive permanent resident status under the general amnesty provisions of the 1986 Immigration reform, IRCA. IRCA does not require this result and, in fact, specifically delegates to the Attorney General the authority to determine which programs are subject to the five-year disqualification. The Attorney General has not yet issued final IRCA regulations, but the Corporation has gone ahead and adopted its proposal anyway, effectively usurping the Justice Department's statutory role. The Senate has told LSC that its interpretation of IRCA is wrong and both Houses have stressed that the Corporation has no authority to act before the Justice Department does. It is my understanding that the Corporation plans to publish the final regulation anyway, regardless of what Congress has said and the fact that the Justice Department has not acted.

Spurred on by their "success" with the Alien regulation, the Board adopted a new regulation on fee-generating cases at its March 3rd meeting. Despite overwhelming opposition--LSC received over 400 comments, all negative but one--the Board voted to offset against recipients grants 75 percent of all attorneys' fees over $100,000 received by legal services programs after November 1, 1988. When it was suggested that this provision would serve only to punish those programs who were aggressive, effective, and successful in serving their clients, the Chairman agreed and admitted that to be his purpose in suggesting the revision. Not only will this unjustifiable provision punish good programs; it will also discourage programs from bringing many cases that require substantial resources, another one of the Chairman's stated goals. Perhaps most important, it will limit the ability of poor clients to force quicker and more favorable settlements and raise ethical questions about the attorney's ability to adequately and effectively achieve results for the clients. Moreover, it completely undermines LSC's credibility when it says it encourages legal services programs to develop non-LSC sources of funding. Attorneys' fees have been a valuable and growing source of additional funds for successful legal services programs. This regulation will chill this growth and establish a roadblock for much of the most effective litigation that legal services programs now bring.

At our April 14 meeting the Board majority adopted revisions to two existing regulations that will further dry up funds available to deliver legal services to the poor. The new provisions will severely restrict the use of as much as $12.9 million in private funds donated by United Way, private foundations, bar associations, community organizations or even individual contributors such as myself. No longer may private funds be used to represent victims of domestic violence, the elderly, disabled, farmers or others, unless they qualify under LSC's financially eligibility standards or "the funds" are used as a match for public funds in non-means tested programs. Often private foundations provide funds for such representation only if the program agrees not to impose a means test for clients who meet other criteria. As a result of their vote on this regulation, the majority may have disallowed as much as $3.5 million in private funds.

Private funds can no longer be given to programs to train clients about their rights and responsibilities or to train personnel from social services and mental health facilities. Yet, such training has enhanced collaborative efforts with social services providers and often alleviated the need for litigation against such agencies. Nor can private funds be used to undertake case studies, (i.e., on drug-infested public housing or the abuse of nursing home residents), or background legal memorandum, even those funds were specifically earmarked by the funder for such efforts and would not be provided otherwise.

As much as $9.4 million in private funds may be disallowed by these provisions.

Under these new provisions private funds will be significantly reduced, staff laid off, fewer eligible clients served, offices closed, and programs will be severely limited in the uses to which private funds can be legitimately put.

Also at its April 14 meeting, the Board adopted a totally new regulatory restriction, prohibiting legal services programs from undertaking representation in matters that involve any manner of redistricting. It would preclude legal services programs from using LSC or private funds to represent eligible clients in 95% of the cases that are also brought under the Voting Rights Act, and includes, inexplicably, a prohibition on work dealing with the taking of a census.

This new regulation is without precedent and was adopted without any reasonable justification or legislative authority. While it is clear that Congress can impose substantive restrictions on the kinds of cases legal services programs may undertake on behalf of eligible clients, it is equally clear that

LSC cannot do so unilaterally, without clear direction from Congress.

If LSC is permitted to implement this restriction, it will set a dangerous precedent, handing members of the Board's conservative majority virtually unfettered discretion to impose prohibitions on legal services programs, supported only by the personal predilections of a few Board members as to what is, or is not, appropriate work on behalf of the nation's poor. Under the guise of ensuring that funds are focused on the delivery of "basic day-to-day legal services," LSC will be permitted to chip away at the ability of lawyers in legal services programs to protect the basic civil rights of the poor people that they serve.

I cannot emphasize more strongly how important I believe it is for you to continue to enforce the restrictions on this Board's actions. The reprogramming requirement on regulatory activity is just as important as the line itemization. Until such time as a responsible Legal Services Corporation Board, committed to the principles for which this Corporation was established, has been appointed by the President and confirmed by the Senate, the Congress remain the only protection that our grantees and their indigent clients have against the whims and excesses of this Board's majority. Please do not abandon them.

In response to the Reagan Administration's threat to veto the FY 89 appropriation that included funds for LSC, Congress adopted a rider that will require the new Board, that is yet to be nominated or confirmed, to:

> ...develop and implement a system for the competitive award of all grants and contracts, including support centers, to take effect after September 30, 1989.

The requirements of this rider are ambiguous at best, but clearly direct the new Board to consider how the issues raised by competition might be best approached in the legal services context. The rider does not authorize the current Board to do anything! Nevertheless, LSC has requested $1,000,000 as part of its FY 1990 budget to develop and implement competitive bidding. It is my understanding that the current LSC staff is busily devising a "plan" to implement a system of competitive bidding that goes beyond any appropriate initial staff background work and that the Board's Committee on the Provision of Legal Services will be holding a series of hearings during the summer to receive input on the "plan." I fail to see how these efforts comport with the rider.

According to the press release accompanying the budget request, the proposed bidding process will utilize a system of "multi-year grants under which eventually no more than one-third of the program areas would be subject to competition in any one year." The budget request itself says only that the funds "will cover the cost of educating prospective providers and their local communities about the availability of federal funds for legal services, and developing and disseminating requests for proposals."

Neither Congress nor the Corporation has said what it means by "competition." "Competitive bidding" could merely mean periodic competition for the grants that support one basic service provider in a geographic OR it could mean something else.

The "something else" could undermine the current delivery system and fragment services by breaking up the service area into small, arbitrarily defined geographic areas, each served by a separate private law firm or nonprofit organization, by splitting services along substantive lines with separate contracts being let for, e.g., uncontested divorce, landlord/tenant, public benefits, regardless of locally defined priorities, or by some other "creative" alternative.

Any of these alternatives would result in the loss of local control which has been a hallmark of the legal services program.

They would result in the loss of economies of scale and efficiency, loss of coordination and the ability to effectively network among legal services providers who would be competing for scarce LSC dollars rather than concentrating on effective representation. They would lead to administrative overlap and excessive overhead expenses for the contractors as well as for LSC which would have enormous expenses for administration and evaluation.

If "competition" were to lead to the break-up of existing nonprofit providers and the parcelling out of LSC dollars to private attorneys, legal services would lose its ability to leverage other non-LSC resources and would undermine efforts to increase pro bono efforts by the private bar. After all, why should lawyers provide free service when they can compete for a piece of the pie?

Lastly, by dismembering the existing delivery system, legal services would lose its human investment in experience and expertise that has built up over the past 25 years. I suspect that such results would suit the current Board majority just fine!

The only justification that LSC has presented for instituting competitive bidding was stated in the press release accompanying the budget request:

> The introduction of competitive bidding will bring LSC into line with standard practices used by both private and governmental grantmakers, and will open the delivery of legal services to a larger group of providers. Logically, expanding the pool of potential service providers in any one geographic area will encourage program adherence to contract terms and principles of managerial efficiency. (Emphasis supplied)

This translates to more cases for less money. Cost per case is the only criteria LSC is apparently going to consider. Increased quality of representation is not suggested as a goal, neither is increased responsiveness to local needs or enhanced ability to improve the lives of poor people generally. The goal is the privatization and commercialization of legal services. Competition is viewed as a benefit for its own sake.

Approximately 85% of federal grants are distributed on the basis of mathematical formulas to states or other predetermined grantees who receive the funds automatically. Less than 15% of federal grant funds are distributed by discretionary grants which are competitive. Discretionary grants tend to be highly specialized and are not awarded on a national basis to fund comprehensive services to a sector of the population.

Implicit in the LSC statement is the notion that the fear of losing out to competing applicants will keep grantees on their toes. In fact this fear will engender instability, will restrict programs in their ability to recruit staff and attract supplemental funding and will chill program's creativity in addressing problems for fear that they will irritate LSC and lose their grant for some perceived "transgression" against "contract terms." The Corporation's recent behavior toward grantees demonstrates that this fear is well-grounded.

The Corporation has yet to produce any evidence even remotely suggesting that competitive bidding will produce any measurable benefits for legal services clients or even for the Corporation! None of the Corporation's efforts to test alternative or supplemental delivery systems have studied or sought to establish the benefits of competition, per se. The Corporation has yet to issue any evaluation of its highly touted and completed private law firm program, although it has collected voluminous data on the results of that experience.

One instance where competitive bidding has been tried in a situation comparable to civil legal services is the experience of the 1980's with contract services for criminal defense work. This experience has been closely studied and the results have been well-documented. Every study clearly established that this effort was an unmitigated disaster. Instead of saving local governments money, which was the stated goal, costs actually went up, and quality of services disintegrated. The lessons learned through that experience should be heeded in considering whether to head down the road to "competition" in the delivery of civil legal services.

Despite the horrendous experience with contract criminal defense services, neither the American Bar Association (ABA) nor the National Legal Aid and Defender Association (NLADA) has condemned this system outright. Instead, NLADA developed and the ABA adopted a set of detailed standards for awarding and evaluating contracts. These standards state unequivocally that cost cannot be the sole basis for competitively awarding contracts. However, at the present time no contract defense system meets the current national standards.

No similar criteria or performance standards exist for civil legal services. Neither the LSC Act and regulations, nor the ABA Standards for Providers of Civil Legal Services provide performance standards for legal services. Until such standards are developed, any general system of "competitive" awards could only be based on simplistic cost factors or, worse, on subjective, political or ideological judgments about who should be providing what kinds of legal services.

Legal services programs have had some extensive experience with competitively-awarded contracts from state and local agencies to provide legal services to particular groups such as the elderly, the disabled, and the institutionalized. Some legal services programs have successfully operated under these contracts for years. However, many others of these contracts have been awarded for a year or so, only to be discontinued or relet to another provider because of the funders' displeasure, not with the cost or quality of services, but with the nature of the matters pursued. Decisions about contract renewal have been fraught with political and ideological considerations, favoritism or outright animus to legal services programs. Contracts have been discontinued, leaving legal services programs with pending cases and no source of referral or continued funding to handle them.

LSC has spent millions of dollars over the last eight years to monitor grantees for compliance with the "process" requirements of the Act and regulations, but virtually nothing to ensure that the services that are provided are of high quality. LSC does not even suggest that the competitive market will promote quality of services. The LSC press release is a tacit admission that it does not care about quality, but only "compliance" and cost.

It is clear that implementing generalized competition for LSC funds now, before any criteria or standards are developed, would be a costly mistake. High-quality existing programs would be subject to loss of funding for extraneous ideological considerations, justified only by a promise of lower cost from untried competitors who may have little or no experience or capacity to provide high-quality legal services. It is equally clear, however, that the current Board and the existing LSC staff under the Board's direction, are incapable of developing meaningful criteria and standards or of testing any models of competition and honestly evaluating the results.

I am not suggesting that competition can never be a useful tool in the legal services context. Over the years LSC has used competition to award funds in a number of instances. These efforts have been successful when criteria for awarding the grants have been clearly established at the outset and the goals of the competition have been well understood by both the applicants and those charged with the responsibility to decide among the applicants.

LSC has used competition effectively to distribute new money to fund programs in previously uncovered areas, to fund experimental projects for research or testing of new concepts, to expand state and national support for previously uncovered substantive areas, and to award grants for geographic areas previously served by grantees that have been defunded for poor quality services.

While I am sure you have detected that I have found the experience of serving on this particular Board extremely frustrating, I want you to understand also how proud I am to have been associated with the legal services community, those people who work for and believe in this program. I have never met a more dedicated and talented group of people than those who work for legal services programs throughout the country. They are serving more and more people with fewer and fewer resources, and they continue to provide their clients with legal representation of the highest quality. They do this without a single word of encouragement or support from the Legal Services Corporation. In fact, they do so in the face of never-ending bureaucratic harassment. They do their work quietly, competently and compassionately, protecting not only their clients' legal rights but their dignity as well.

On their behalf, Mr. Chairman, I want to thank you and the members of this subcommittee for the concern and support you have shown for this program over the years. I urge you to remain steadfast in that support, to continue to protect this Corporation from itself by keeping in force the restrictions on the Board's activities, and, if at all possible, to provide at least a modest increase in funding for the field programs and the support network that serves them.

STATEMENT OF ROBERT D. RAVEN

I am Robert D. Raven, a practicing attorney from San Francisco, California, and the President of the American Bar Association. This testimony reflects the strong support of our Association and its 350,000 members for a vigorous national program of legal services for the poor. It is our recommendation that $383.5 million be appropriated to this program for FY'90.

Let me say at the outset that we are indebted to the members of this subcommittee for their steadfast support for this program and for their constant vigilance to ensure that the program is properly managed. It is disturbing to think what the legal services system in this country would be like if this subcommittee had not repeatedly provided the guidance and direction it has given.

The organized bar's concern for assuring that all people, regardless of economic status, will have access to legal services and to the justice system is longstanding. The first legal aid society was established in New York City in 1876. The ABA became formally involved with the movement in 1920 when a Symposium on Legal Aid was held at our Annual Meeting and a Special Committee on Legal Aid Work was established. Charles Evans Hughes delivered a paper at the symposium and was then appointed Chairman of the Special Committee. His paper well states the case for a federal legal services program:

> The poor man, as well as the rich man, is entitled to the law of the land. There is no promise for the poor man in a government without law, where the discretion of petty potentates stands in lieu of accepted principles. The remedy in democracy is not to seek Justice without law, but to secure justice according to law -- to have laws which are definite and just, and then enforce them equally. But in a government of law, the case of the poor man may involve questions of law and disputes as to facts which leave him helpless if he cannot have expert aid -- the advice of one learned in the law, honest and keen. Without opportunity on the part of the poor to secure such aid, it is idle to talk of equality before the law. You may provide the machinery of courts, but to have justice according to law, save in a very limited class of cases where a judge may act as advisor, you must have the aid of lawyers. The legal aid society is the poor man's lawyer and gives him the essential assistance he cannot obtain elsewhere.

Hughes went on to comment on the particular difficulties of meeting the legal needs of the poor through voluntary contributions of individual lawyers in a large urban area like his own New York City:

> The congestion of population affords opportunity and cover for myriad wrongs against the poor, and the high-minded practitioner moves in a world to which those most in need are utter strangers; the poor are victimized on every hand and they know not to whom to turn, while those who would prey upon them and make their misfortune a source of illicit gain are always on the watch for opportunity. The members of the Bar who are most likely to recognize professional obligation to the poor are rarely so circumstanced that they can give aid without a waste of effort which suitable organization would render unnecessary; and, while their sporadic efforts would furnish relief here and there, as chance might offer, a multitude would continue to suffer without redress. It is safe to say that the 34,000 applicants whose cases were considered last year by the Legal Aid Society of New York would, for the most part, have gone without the advice to which they were justly entitled had it not been for organized legal aid. Moreover, the wrongs of the poor fall into well-defined classes, and the attorneys for the legal aid societies acquire a wide knowledge and an efficiency in dealing with these cases which enable them to give a service at the offices of the organization which could not be duplicated by the best law firms in the city. The lawyer in a great city best discharges his obligation to the poor, not by attempting to deal with matters to which his experience is foreign, but by supporting the legal aid association.

The Association and the organized bar worked steadily over the following years to provide access to legal services for the poor. In 1922, the Association was able to identify 33 legal aid societies and bureaus in the country. By 1965, their number had grown to 248 legal aid offices.

But despite this growth, and the great commitment of private attorneys around the country who devoted their time, energy and funds to supplying these free legal services, it had become clear by the mid-60's that voluntary services provided by lawyers would never be able to satisfy the legal needs of all the poor in this country. Under the leadership of our then-President, Lewis Powell, the Association worked closely with the Office of Economic Opportunity to establish the OEO Legal Services Program. Our House of Delegates adopted unanimously a resolution in February, 1965, supporting the establishment of the program, and it was created later that year. In 1974, Congress passed, and President Nixon signed into law, the Legal Services Corporation Act, reformulating the program as an independent Corporation.

Since then, the local legal services programs around the country have been struggling to provide meaningful access to the legal system for those who lack the funds to pay for counsel. I say "struggling" because the programs have suffered a decade of declining resources combined with a hostile governing board at the national level. We are very hopeful that with a new Administration in place, a new Board of Directors, truly committed to this program and not trying to undermine it, will be appointed, and that a sensible level of funding will be provided.

There is a crying need for a substantial infusion of additional funding into local legal services programs. In FY'81, the Corporation received an appropriation of $321 million. This level of funding enabled local programs to provide two attorneys per 10,000 poor persons -- a level of funding appropriately described as ''minimum access'' (in the population as a whole, the ratio is roughly 20 attorneys per 10,000 people). It has been estimated that even at that funding level, only about 20% of the legal needs of the poor were being met. But that high-water mark, as low as it was, has been terribly eroded by budget cut-backs and by inflation. To return to the FY'81 ''minimum access'' level -- that is, simply to restore the program to its funding level of eight years ago -- would require a funding level of well over $500 million.

There have been tremendous efforts made in the last eight years to identify and tap into other sources of funding and support to help ease the gap.

In the area of pro bono contributions of services by lawyers, for example, our Association and the state and local bars have redoubled their efforts to involve private attorneys in formal bar-sponsored pro bono programs. In 1981 there were fewer than 50 formal pro bono programs, of rather modest proportions, in operation in the country. By 1988, there were 625 programs, and over 120,000 attorneys contributing their services.

Another important contribution to reducing the post-FY'81 ''deficit'' of resources has been the rise of Interest on Lawyer Trust Account, or "IOLTA,'' programs. These bar-inspired programs seek to have banks generate and pay interest on accounts set up by attorneys to hold escrow and other funds given to attorneys by their clients. These funds are generally in the account for a short period of time and frequently are small in amount, and the banks have therefore not paid interest to the individual clients. However, the combined funds in an account can generate substantial interest over a period of time; and this interest income in many states is now being paid into a fund to be used for law-related public service activities, including the provision of civil legal services to the poor. There are now programs in existence in 48 states and the District of Columbia; last year, they generated $54.3 million in income, of which $44.8 million was allocated for civil legal services for the poor. It should be noted, however, that the allocation of income between states was very uneven; California alone accounted for 32% of this total, leaving only $30.3 million in additional revenue for all other jurisdictions.

While these have been very encouraging, indeed remarkable, developments in providing supplemental funding, they have not made up the fall-off in funding at the federal level, let alone the huge unmet legal need which existed then and now. Several state bar associations have undertaken comprehensive assessments of the legal needs of the poor in their respective states and how well those needs are being met. Two associations -- those in Maryland and Massachusetts -- have completed their assessments and published their reports. The Maryland assessment was conducted under the chairmanship of Rep. Benjamin Cardin; it concluded that, despite strong pro bono, IOLTA, and other support, the combined legal services efforts in the state were meeting only 15-20% of the legal needs of the poor. Similarly, in Massachusetts, which also has a surcharge on filing fees in the state courts which goes to providing legal services for the poor, the study found that only 15% of the legal needs of the poor were being met.

The ABA is now completing the first national legal needs survey of low income people, and we plan to release it next month. This survey reveal~~ed~~s that low income households meeting LSC eligibility criteria experience 1.08 legal problems annually for which no legal help is obtained. This translate to approximately 10 million legal problems each year nationwide; since Corporation grantees handle approximately 1.5 million cases annually, this figure underscores the fact that the overwhelming portion of the legal needs of the poor remain unmet.

No doubt there are additional pro bono services which can be obtained; no doubt there will be, at least in the short-run, some increase in IOLTA funding; and no doubt, in some states, additional funds can be obtained through the imposition of a filing fee surcharge or direct legislative appropriation. But the plain truth is that there is no reason to expect any significant increase in funding from these sources; that the precipitous decline in real federal dollars has had a dire effect on the ability of local programs to meet even a small percentage of client needs; that there are enormous unmet legal needs of the poor; and that a rededication of the federal government to providing funding in this area is vitally needed. Surely we can do better than a funding level which equals less than $10 per poor person in this country.

As I noted above, we recommend an appropriation of $383.5 million for FY'90. We believe far more could be appropriated to and utilized by this program. An appropriation of over $500 million would be required simply to return the program to its FY'81 real-dollar level. Our recommendation seeks only to restore the loss sustained by the program since FY'84 due to inflation. Congress restored the Corporation's appropriation to a level of $305.5 million in FY'84; if that figure is adjusted upward for inflation, based on the Consumer Price Index, a current appropriation of $383.5 million would be required to restore the erosion which has occurred since then.

Your Subcommittee has also fashioned in recent years riders dealing with specific aspects of the Corporation's budget and activities. We offer the following comments regarding two issues we anticipate you may address in this process.

1. Competitive bidding. The FY'89 appropriations measure contains a rider authorizing a new Board of the Corporation, once confirmed, to "develop and implement a system for the competitive award of all grants and contracts...." The requirement that no such system should be developed by the current Board is a sound one and should be continued in the new appropriations legislation. The current Board repeatedly has taken steps to limit effective representation by local legal services programs and should not be permitted to implement a sweeping change in the current delivery system.

The notion of having local programs compete for grant funds on an annual or frequent basis has a facile appeal. But there are serious questions about the efficacy of any such program. There is a need in this area to preserve the continuity of representation in cases which do not neatly fall into one fiscal year, and there is a need to preserve the expertise in the specialized areas of poverty law which can be found in existing grantee programs. The history of similar approaches in the criminal defense field has demonstrated that this approach is problem-ridden and, in my view, a failure. To give to a hostile LSC management the wholesale right to stop funding any and all programs it chooses would be to end legal services delivery for the poor in this country as we know it.

2. Non-LSC funds. The current Board has also sought to impose limitations on the expenditure of non-LSC funds received by local legal services programs. There are serious legal and constitutional problems with this federal funding agency's attempting to tell private attorneys, foundations, United Way programs and others that they may not give money to local legal services programs to be spent as the grantor wishes it to be spent.

This represents governmental interference with the private sector and with private individuals of a sort totally inconsonant with the principles of our democratic system. Counter to the desires of President Bush, such an approach has the effect of dimming or extinguishing the "thousand points of light" of private sector initiative. The Corporation should be prohibited from imposing any restrictions on the use of non-LSC funds which has not been specifically legislated by Congress.

There are understandable tensions, conflicts and controversies in a program which provides funding for representation in a highly adversary process. But it is the adversary process and the ability of any citizen, rich or poor, to be heard in that process which characterize our American justice system, and distinguishes our system of government from that in totalitarian states. The Legal Services Corporation represents our national commitment to making the ideal of "Equal Justice Under Law" a reality. The unique partnership between public and private resources which this program represents is a worthy vehicle for achieving this goal. But it must be given proper governance and sufficient resources to be able to carry out its mission. The cause of justice requires no less.

STATEMENT OF WILLIAM O. WHITEHURST, JR.

My name is Bill Whitehurst. I am a past president of the 51,000-member State Bar of Texas and a partner in the law firm of Kidd, Whitehurst, Harkness & Watson in Austin. I am also a co-founder of the ad hoc national group **Bar Leaders for the Preservation of Legal Services for the Poor** which involves over 130 bar associations and hundreds of bar leaders from every state in the nation.

I am honored to have the opportunity to appear before you today to state the case for legal services and to advocate a fair and adequate appropriation for the Legal Services Corporation in 1990. It is also a privilege to be able personally to thank this Committee for its steadfast support for legal services and for your diligence in keeping a watchful and wary eye on the mounting bad-faith -- even malicious -- activities of the current LSC Board majority and its senior staff.

In a thoughtful budgetary analysis, the Project Advisory Group, which is the professional association which represents the LSC-funded programs, is advocating an appropriation of

408.4 million dollars for the Legal Services Corporation in 1990. **Bar Leaders for the Preservation of Legal Services for the Poor** heartily endorses that figure as the very least this nation should do to ensure that its poorest citizens have fair and equal access to the system of justice of which we as a nation are so proud -- a system which we celebrated just yesterday through Law Day 1989.

President Bush, in declaring May 1 as Law Day USA, said:

> The American legal system plays a vital role in maintaining the balance between individual freedom and civil order . . . . Our nation has long been committed to ensuring that this system serves all who seek redress of their grievances . . . . Despite its many accomplishments, however, our legal system still exhibits a number of imperfections . . . . These problems are particularly distressing to the poor. Many indigent persons are simply precluded from pursuing legal remedies to their grievances. All too often, this exclusion invites disrespect for our judicial system and subsequently undermines the strength of our democracy. On this Law Day, which is dedicated to the theme of "Access to Justice," we remind ourselves that it is everyone's responsibility to ensure the effectiveness and accessibility of the American justice system.

Given the President's eloquent charge that it is time for us to rededicate ourselves to "access to justice," I would urge this Committee and the Congress to recognize that now is the time for this nation's **budget** to include an appropriation which can make access to justice a reality. Now is the time to shape an appropriation which will turn President Bush's words into more than just Law Day rhetoric.

Today's truth, however, is that even 408.4 million dollars will not buy for the poor in our midst anywhere close to the legal representation and services they need. It will not provide nearly enough lawyers for all of the elderly poor who are arbitrarily denied social security or disability income or other basic survival benefits to which they are lawfully entitled. It will not provide nearly enough lawyers for the soon-to-be-homeless who are undergoing unlawful eviction proceedings. It will not provide nearly enough legal advocates for poor children who are denied potentially life-saving medical treatment for catastrophic illness. Four hundred and eight million dollars will provide nowhere near enough lawyers to be available when needed -- in emergencies -- for legal proceedings in which serious domestic violence is a factor. It will not provide the lawyers necessary to meet the crying needs of migrant farmworkers and their children who are unlawfully denied even the most basic of safe and sanitary working and living conditions.

The reality is that we as a nation can and should do even more. But, 408.4 million dollars is presented to you as the **first step** of a three-step process for re-embracing a national and budgetary commitment to providing two federally-funded lawyers for every 10,000 poor people -- a funding concept long known as "minimum access to justice."

Again, on behalf of the many bar leaders for whom I speak, I fervently request that you boldly take the first step back toward minimum access to justice as you negotiate and shape the 1990 LSC appropriation.

However, the level of appropriated dollars is only one part of our collective concern these days about legal services for the poor. This is the fourth year **Bar Leaders for the Preservation of Legal Services for the Poor** has come before Congress to talk about the Legal Services Corporation and its renegade leadership. Each year, our anger has deepened and our concern has grown. This year, it is hard to find words strong enough to describe the intensity of what we feel when confronted with the never-ending stream of **deliberately** destructive and debilitating actions from the LSC Board majority and its senior staff.

I am here to tell you that there is a festering sense of outrage among the leadership of the legal profession about the abuse of power and abuse of appointive office which is currently taking place within the LSC administration and being **paid for** with the precious LSC appropriation. There is a growing sense of shock about the LSC Board's blatant disregard for the will and intent of Congress -- a disregard they have exhibited to this very Committee over and over. And there is a building furor over the openly hostile and almost proudly antagonistic actions and initiatives emanating almost weekly from the Legal Services Corporation -- all designed not to ensure access to justice for the poor but to destroy any sense of justice as you and I and President Bush know it and believe in it.

I am here to report to you that our anger about the state of affairs at LSC is mounting. It knows no political or geographic boundaries. It is shared by both Republicans and Democrats. It is felt by all bar leaders who believe strongly in the basic constitutional guarantees and promises of our justice system and who do not want to stand by idly while a small band of zealots tries to deny that constitutional promise to a whole class of our citizenry -- just because they are poor.

The bar leaders for whom I speak are not used to "taking to the streets" to make their case. These are people who basically believe that the bureaucracy tries to work in good faith -- and that the daily guardians of the policies you set are well-intentioned -- and that people who are sworn to uphold the LSC Act will, in fact, do just that. We have held our outrage in check for a long time, but we cannot do so for much longer. Many of my colleagues have said over and over again in 1987 and 1988, "It has got to get better at LSC. It can't possibly get worse."

But it is worse, indeed. So let us look at where we are in 1989. Let us look as what has moved our respected and reasoned ABA President, Bob Raven, to talk of the LSC

Board's "guerrilla warfare" against the programs it funds. Let us look at what moved the Chancellor of the Philadelphia Bar Association in his testimony before your House counterparts last month, without even being aware of Mr. Raven's characterization, to call the actions of LSC "trench warfare" against local programs. Let us look at what moved The New York Times to call the LSC Board majority "saboteurs" who have "worked to undermine and kill the program."

Within the last year alone, we have witnessed the current Legal Services Corporation leadership embark on one of the most bizarre and dizzying campaigns ever mounted to maim or permanently cripple a federal program.

- We have seen law firms hired by LSC to lobby **you** for an 18% **cut** in the agency's appropriation.

- We have witnessed the spectacle of Board member Clark Durant's appearance on "The 700 Club" to beseech the faithful to lobby for a presidential veto of your **entire** 15 billion dollar Commerce, Justice appropriation because it contained too much money for LSC and no free rein for him to dismantle the program.

- We have seen LSC's leadership orchestrate an entire veto campaign in the halls of Congress and in the White House over the same budget issue.

- We have experienced the need for a special House oversight hearing to investigate how this campaign and how all Clark Durant's activities were funded and carried out. (One LSC Board member tried to soften the investigatory atmosphere. ""Clark Durant is not a criminal," he told the oversight committee. "Clark Durant is a flake.")

- We have seen the ouster of LSC President John Bayly whose professionalism just would not let him step over the bizarre ideological edge advocated by the LSC Board's slim six-member majority.

- We have heard and read the ravings of John Bayly's replacement as LSC President that the local legal services system is rampant with waste, fraud and abuse -- allegations he absolutely cannot substantiate even after LSC's expenditure of approximately five million dollars annually to "monitor" local programs.

- Now we are experiencing onslaught after onslaught of unreasonable, unjustifiable and unconscionable regulations and other bureaucratic "grant conditions" -- regulations being churned out by LSC at a feverish pace. These appear designed only to harass or to harm -- designed only to thwart the efficiency and effectiveness of the local legal services programs which LSC is supposed to support and nurture.

And if that is not enough, now we have the Board Chair and President appearing before you and your House counterparts to push, once again, for funding **cuts** in the next appropriation. And, mindful that a new LSC Board will soon be nominated, these same people are also working feverishly to promote a new slate of Board members. This slate, which they are pushing hard, is made up of people whom they believe to hold the same level of animosity to legal services as they do and who will behave in the same manner I have just described.

Well, I think it is time we all said, "Enough!" Quite frankly, I worry about putting a single federal dollar in the hands of the current LSC leadership if they are given one ounce of discretion in how to spend their appropriated funds.

In addition to that very real fear about how next year's LSC appropriation will be spent by the current LSC leadership, and in addition to our moral outrage over the LSC Board's breach of fiduciary duty to the delivery system it funds, I also want to add that, as a practical matter, the current LSC leadership is wasting our time -- and it is wasting your time and that of your staff.

Each of this Board's latest regulatory initiatives, for example, has prompted hundreds of bar leaders from all across this country to write **lengthy** letters in vehement opposition to these proposals. The Corporation has stacks of responses in regard to each of its latest schemes. And I know these latest activities also have taken an inordinate amount of **your** time as you have had to respond to a glut of ill-intentioned "reprogramming" requests. Of course, LSC ignores us both. Even Hortencia Benevides, one of the LSC Board's client representatives, plaintively asked LSC Board Chair Mike Wallace at the most recent Board meeting, "What is the point of getting all these comments if we don't pay any attention to them? Most of the time it seems that your purpose is already made clear. It's just a waste of time."

Additionally, scores of bar leaders, have spent hundreds upon hundreds of volunteer hours monitoring the overall activities of LSC's leadership in order to counteract their harmful impact on local programs. But just think for a moment if we could have taken all the time we have spent, and all the resources we have utilized, for a more positive kind of pro bono work -- such as rendering some direct legal services to the poor or working cooperatively with our local legal aid programs to develop creative strategies for addressing the significant unmet needs of the poor or planning for the future.

But for now, I am sad to say -- as long as this LSC Board is allowed to sit at the helm of this program -- we are forced to use our energies to maintain a constant vigilance over the Board's attempt to obliterate an effective, locally-controlled delivery system. We **must** block its attempt to make a mockery of the concept of equal access to justice.

And I ask you again, as I have done before, to maintain that same kind of vigilant watch over LSC. We are grateful that you have done so in these past few years, and we hope you will continue the struggle with us. As the Philadelphia Bar Association Chancellor recently told your House counterparts, "This battle is not for the weary."

I would also ask, to whatever extent you are able, that you use your persuasive powers within the White House to reaffirm the urgency of a new LSC Board being nominated and confirmed -- but **not** the slate being pushed by LSC. We need a Board which **believes** in the findings and intent of the LSC Act and one which truly recognizes that even the poorest among us should have **full** access to our nation's court and to the rights and benefits to which they are entitled -- a Board which understands, as The New York Times recently put it, "the social value of full access to legal representation, even if that means the Government may sometimes end up funding its enemies in court."

Unfortunately, until such a Board is in place and confirmed, our creative energy -- our one thousand points of volunteer light -- will **continue** to be diverted to the task of protecting our current national legal services system from those who would do it harm.

There is one other very major, totally disingenuous, distortion being bandied about by ~~LSC in~~ these current budget discussions which absolutely **must** be exposed here today for the malevolent sham that it is -- and that is the current LSC administration's new and seemingly innocent attempt to hide LSC's true intentions with a new "code language." What I am referring to is their constant reference in recent months to the "day-to-day, local legal needs of individual poor people." It is now time to expose this verbal fraud for what it is -- it is time to crack this disingenuous code.

These words **really** mean services to one person or family at a time for the **simplest** of complaints only -- complaints which will **never** require research or training. And they reflect LSC's strange notion that legal services attorneys **ought to** treat their cases simply, even if an emerging fact pattern might dictate otherwise. These words mean only handling cases in which the rich or the powerful, or government institutions, are never offended and their actions are **never** questioned. In the world of this new LSC "code," it is O.K. for Mary Doe to sue John Doe for a divorce or child support. It is even O.K. for John Doe to counterclaim that the standardized support order does not take into account his current joblessness. It is O.K. for John and Mary Doe together to sue Sam's Used Cars or Artie's Appliance Shop. This involves the poor suing the poor or simply taking on the little guy. No one will squawk to those in political power. To be sure, those on the losing end of such law suits will not like it, but these cases generally do not make waves.

Let us listen to the words from the Legal Services Corporation's 1990 budget request to Congress:

> This fiscal year 1990 budget request reflects the LSC belief that the mandate of the Legal Services Corporation is to provide high quality legal services to **individual poor persons** who cannot otherwise afford legal assistance. *Consequently*, the budget is structured to allocate maximum funding for programs that provide direct legal assistance to indigent clients. No funds are allocated for research or training centers or for other services not related to the direct delivery of legal assistance."

The recent House testimony of both LSC Board Chair Wallace and President Terrance Wear tracks this language almost exactly and expands on the notion further. Mr Wear talks about "eligible poor **individuals**." Both emphasize what they call "basic local day-to-day legal services." But let us scrutinize this "code" a little more closely. First, I do not think LSC's definition of "quality" is in any dictionary with which I am familiar. Their version of "quality" means unobtrusive, inoffensive; "quality" in their eyes means services rendered by the lowest bidder despite reams of data that show such a scheme is a travesty of justice in the criminal defense arena. Their version of "quality" means services rendered with no training or research or back-up support from someone with special expertise.

Second, **their** concept of "individual poor persons" is a total distortion of the real meaning of the LSC Act. **Their** emphasis implies that it is O.K. to represent John and Mary Doe with their faulty refrigerator or individual domestic problems but it is **not** O.K. to represent them, plus all of their fellow tenants, in a lawsuit against a powerful landowner or developer because their large city rental unit lacks heat and adequate plumbing. It is O.K. to represent Mary Doe's frail and elderly mother before the Social Security Administration but it is **not** O.K. to represent a whole group of elderly clients referred by a Senior Citizens Center, all of whom have received the very same notice of cutoff of certain social security benefits. This case of the elderly client group is not simple. It involves complex regulatory law and possibly a suit in federal court which may ultimately affect how the Social Security Administration renders service to tens of thousands of elderly people. And it is a case that will involve intensive research and back-up support from the groups which we refer to as the senior partners of the legal services system -- the support centers. No, this case is not a local, day to day case in the narrow legal services world of Messrs. Wallace and Ware.

Using the new "code", it is **not** O.K. to represent all children housed in a specific state school for the mentally retarded, even though the conditions for all are dirty and punitive, and even though educational plans uniformly are **not** being followed. These types of cases all involve -- as the LSC Act **really** requires -- "access to the system of justice for individuals who seek redress of grievances . . . (through) high quality legal assistance (which) will serve best the ends of justice and assist in improving opportunities for low-income people." But these cases are not the simple, non-controversial, low-profile cases the LSC leadership has in mind. In the bizarre view of the current LSC administration, these complex cases, handled with the highest concern for ethical and competent representation, are wasteful and abusive of the legal services system.

In this frightening view of legal services, it is not O.K. to represent **all** migrant workers in a single camp, even if **all** of them are experiencing the same illegal and unhealthful living and working conditions. It is clear, from the words and deeds of the current LSC leadership, that as long as the poor have access, in **groups**, to such legal representation, **this** LSC administration will do its best to dismantle the system that makes such cases possible.

Based on a new regulation the current LSC Board passed just two weeks ago, we also know now that, in the eyes of LSC, a person's right of suffrage is not a "local, day-to-day" legal right. In LSC's regulatory view, poor people should not -- in those few cases in which a redistricting plan may seriously threaten their meaningful exercise of their right to vote -- be able to redress **this** grievance through the legal services delivery system. But what in the world could be more basic to our justice system and to the very preservation of our democracy than the right to vote?

Please understand that, in the vision of legal services I have described, the cases of John and Mary Doe are still **very, very** important, and legal services programs every single day represent clients with such problems. But sometimes, because their resources are SO marginal, programs are simply unable to serve Mary or John because the crying need of an evicted family in the streets presents an even **more** basic survival crisis involving access to food, clothing, shelter and at least a subsistence level income -- the very basics for sustaining life. Or, sometimes John and Mary might find themselves on a waiting list for service because the economic survival of a whole group of elderly clients **requires** intensive staff time in social security litigation. Legal Services programs make these hard choices every single day through constant and localized priority-setting overseen by local boards of directors who are carefully and thoughtfully appointed by bar leaders. These choices are neither easy nor fun, and there certainly would be far fewer difficult choices to make or clients to turn away if LSC's national leadership were successful advocates for **more** funding and more resources and support for the legal services system.

Overall, this nation's bar association leaders are deeply concerned and angered by LSC's implication that the poor do not deserve lawyers who have access to training, to computerized legal research, to the substantive expertise provided by the support centers. Bar associations, as you know, are deeply committed to improving the practice of law and the administration of justice. Bar associations promote the use of computers in the law office to assist lawyers in being more effective and efficient. Bar associations sponsor extensive programs of training and continuing legal education. When young lawyers enter solo practice, bar associations sponsor mentor programs to link isolated young attorneys with "senior partner substitutes."

We consider these things to be **basic** to the practice of **competent, ethical** law. These resources ensure high quality legal representation. They are inextricably interwoven with the day-to-day practice of law for any lawyer who strives to be effective for his or her client, and they are indeed in the best interests of the public. And, they are the same resources that you and I would expect our own legal counsel to have and to use constantly. So why should lawyers for the poor not have full and equal access to these **same** resources as they specifically relate to the practice of poverty law? In these days of the LSC Board's attempts to slash its own budgot and strip its national program of all the facets which make it an effective, efficient and **truly** high quality program, who is going to look after the best interests of the poor?

I believe, at this point, it is up to you. If you give this LSC one bit of programmatic discretion, they will strip the nation's poverty lawyers of all the tools they need to be truly effective. LSC's budget document tells you this plainly. It also tells you that **this** LSC administration proposes next year to spend a million dollars to implement a competitive bidding system that they are already designing **this** year -- a design, of course, which will include **their** notion of providing funds "only for day to day services for poor individuals." And, in this Alice-in-Wonderland world of the LSC administration, the concept of "basic day-to-day legal services" means **only** what Messrs. Wallace and Mr, Wear want it to mean -- nothing more, nothing less.

A year ago, the tremendously antagonistic anti-legal services frenzy created by the political activities of Mr.Durant and his colleagues placed some additional pressures on the appropriations process, and out of that we saw the new language about "competitive bidding." But, even then, it was clear to responsible lawmakers that it was an idea not to be entrusted to the **current** LSC Board and staff. Your distinguished House colleague, Representative Neal Smith, summed up the situation bluntly in the final appropriations debates when he explained the caveat allowing only a new Board to implement some form of "competition" in the grants process. He said simply, "We do not trust the present LSC Board." Well, I am here to tell you that bar leaders nationwide do not trust the current Board either.

Despite limiting the Board's ability to **implement** some notion of "competitive bidding," last year's appropriations language has still caused serious problems and concerns. After all, if you do not trust this Board to **implement** any such plan, how can you possibly trust them to **design** it? I am reminded of Senator Rudman's own very memorable words well over a year ago -- "LSC's word is not worth the paper it is printed on. This I say for the record. Frankly, I do not trust the Board of the Legal Services Corporation as far as I can throw the capitol." Well, equally frankly:

- We, as bar leaders do not trust any competitive bidding scheme designed or endorsed by **this** LSC Board as far as **we** can throw the capitol!

- We do not trust their code words about "basic, day to day legal services for individuals" as far as we can throw the Lincoln Memorial.

- We do not trust the new LSC Board slate they are so zealously promoting as far as we can throw the Washington Monument.

- We do not trust their vision for legal services as far as we can throw the White House.

Now that the frenzy of last-year's feverish debate and "700 Club" appeals is behind us, and now that we have had time for careful reflection, we hope you will concur that it is time, at least temporarily, to put aside the undefined notion called "competitive bidding." The nation's bar association leadership asks of you that **all** notions of tampering with or drastically altering the current legal services system be stricken from the appropriations documents until well after a new and honorable LSC Board is in place and can discuss these concepts with you in a much healthier atmosphere of calm and reason and trust.

In the interim, until that time of calm and reason and trust, we fear that **your** task of tightly holding the reins of LSC will continue for much longer than you would like. But, for the sake of justice, for the sake of the preservation of the system which we cherish, we do ask that you hold on tight. We are indeed grateful for your stewardship to date of this essential national program, and we stand ready to make your job easier in any way that we can. I thank you.

Bar Leaders for the Preservation of
Legal Services for the Poor
20 West Street · Boston, MA 02111

All 50 States Represented!

Over 130 Bar Associations Lead "Legal Services Preservation" Effort

The listing below includes all associations which, by Association resolution (*), letter, or other written statement of support by one or more key officials, have pledged their support for a strong and independent legal services program which is adequately funded to render high quality legal services to the nation's poor. As a result of this articulated commitment to legal services for the poor, these Associations and their leaders are considered to be in the forefront of the efforts of *Bar Leaders for the Preservation of Legal Services for the Poor.* (Note: Bar associations should notify *Bar Leaders for the Preservation of Legal Services for the Poor* immediately of any omissions to this list. *Bar Leaders* apologizes for any inadvertent omissions.)

Alabama
• ALABAMA STATE BAR

Alaska
• Alaska Bar Association

Arizona
• STATE BAR OF ARIZONA
Maricopa County Bar Association
• Pima County Bar Association

Arkansas
• ARKANSAS BAR ASSOCIATION
• Pulaski County Bar Association

California
• STATE BAR OF CALIFORNIA
• Beverly Hills Bar Association
• Los Angeles County Bar Association
• Sacramento County Bar Association
• San Francisco Bar Association
San Mateo Bar Association
• Solano County Bar Association

Colorado
• COLORADO BAR ASSOCIATION
• Boulder County Bar Association
• Denver Bar Association
• Larimer County Bar Association
• San Luis Valley Bar Association
• Southwest Colorado Bar Association

Connecticut
• CONNECTICUT BAR ASSOCIATION

Delaware
DELAWARE BAR ASSOCIATION

District of Columbia
• Hispanic Bar Association of the District of Columbia

Florida
THE FLORIDA BAR
• Clearwater Bar Association
• Dade County Bar Association
• Hillsborough County Bar Association

Georgia
STATE BAR OF GEORGIA
Atlanta Bar Association
Lawyers Club of Atlanta

Hawaii
• HAWAII STATE BAR ASSOCIATION

Idaho
• IDAHO STATE BAR ASSOCIATION
• First District Bar Association
• Fourth Judicial District Bar Association
• Fifth District Bar Association

Illinois
• ILLINOIS STATE BAR ASSOCIATION
• Chicago Bar Association

Indiana
• Allen County Bar Association
• Floyd County Bar Association

Iowa
IOWA STATE BAR ASSOCIATION

Kansas
• KANSAS BAR ASSOCIATION

Kentucky
• Louisville Bar Association
Northern Kentucky Bar Association

Louisiana
• LOUISIANA STATE BAR ASSOCIATION

Maine
• MAINE STATE BAR ASSOCIATION

Maryland
• MARYLAND STATE BAR ASSOCIATION
Bar Association of Baltimore City

Massachusetts
• MASSACHUSETTS BAR ASSOCIATION
• Boston Bar Association

Michigan
• STATE BAR OF MICHIGAN
Calhoun County Bar Association
Ingham County Bar Association

Minnesota
• MINNESOTA STATE BAR ASSOCIATION
Hennepin County Bar Association
• Seventh Judicial District Bar Association

Mississippi
• MISSISSIPPI STATE BAR
• Mississippi State Bar Young Lawyers Section

Missouri
THE MISSOURI BAR
• Bar Association of Metropolitan St. Louis

Montana
• STATE BAR OF MONTANA

Nebraska
• NEBRASKA STATE BAR ASSOCIATION
• Lincoln Bar Association
• Omaha Bar Association

Nevada
• STATE BAR OF NEVADA

New Hampshire
• NEW HAMPSHIRE BAR ASSOCIATION
Manchester Bar Assocation

New Jersey
NEW JERSEY STATE BAR ASSOCIATION
• Middlesex County Bar Association

New Mexico
• STATE BAR OF NEW MEXICO
• New Mexico Trial Lawyers Association

New York
• NEW YORK STATE BAR ASSOCIATION
The Association of the Bar of the City of New York
Bar Association of Erie County
• Monroe County Bar Association
• Nassau County Bar Association
• Suffolk County Bar Association
• IOLA Board of Trustees

North Carolina
NORTH CAROLINA STATE BAR
NORTH CAROLINA BAR ASSOCIATION

North Dakota
STATE BAR OF NORTH DAKOTA

Ohio
Cincinnati Bar Association
• Cleveland Bar Association
• Lucas County Bar Association
• Toledo Bar Association

Oregon
• OREGON STATE BAR
Multnomah Bar Association

Oklahoma
Oklahoma County Bar Association

Pennsylvania
• PENNSYLVANIA BAR ASSOCIATION
• Bucks County Bar Association
• Erie County Bar Association
• Lackawanna Bar Association
Lycoming County Bar Association
• Montgomery County Bar Association
• Philadelphia Bar Association
• Union County Bar Association

Rhode Island
RHODE ISLAND BAR ASSOCIATION

South Carolina
• SOUTH CAROLINA BAR

South Dakota
• STATE BAR OF SOUTH DAKOTA

Tennessee
Jackson-Madison County Bar Association
• Nashville Bar Association

Texas
• STATE BAR OF TEXAS
• Amarillo Bar Association
• Anderson County Bar Association
• Austin County Bar Association
Austin Black Lawyers Association
Austin Young Lawyers Association

Texas *(Continued)*
Dallas Bar Association
• Dallas Association of Young Lawyers
• Denton County Bar Association
• Ector County Bar Association
• El Paso Bar Association
• Ellis County Bar Association
• Houston Young Lawyers Association
• Jefferson County Young Lawyers Association
• Midland County Young Lawyers Association
San Antonio Bar Association

Utah
UTAH STATE BAR

Vermont
• VERMONT BAR ASSOCIATION

Virginia
• VIRGINIA BAR ASSOCIATION
Alexandria Bar Association

Washington
• WASHINGTON STATE BAR ASSOCIATION
• Spokane Bar Association

West Virginia
• WEST VIRGINIA STATE BAR

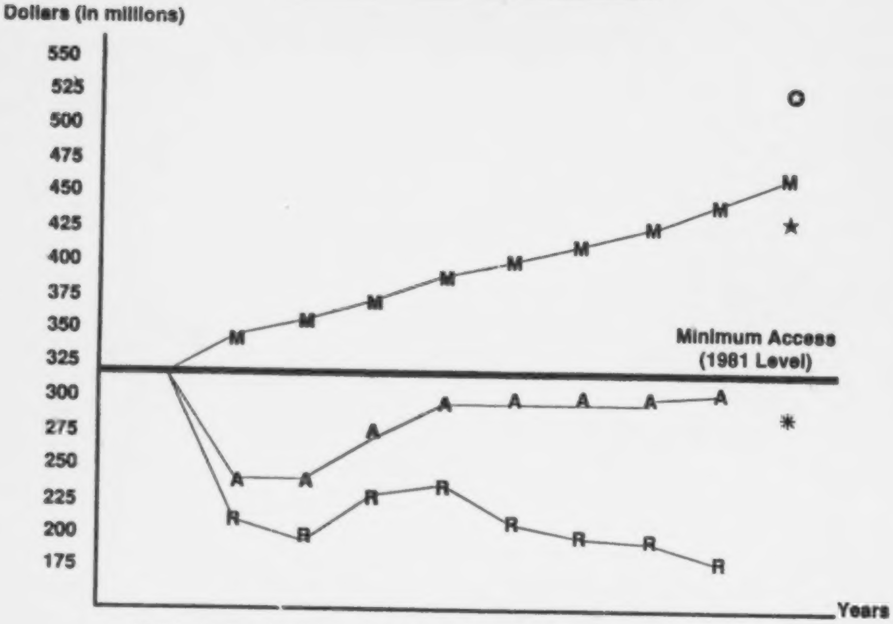
Wisconsin
• Dane County Bar Association
Milwaukee Bar Association

Wyoming
WYOMING STATE BAR

Puerto Rico
Puerto Rico Bar Association Pro Bono Program

New England
• New England Bar Association

LEGAL SERVICES CORPORATION BUDGET



	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
M	321.3	349.9	363.4	377.2	392.3	407.1	411.6	429.6	448.5	467.5
A	321.3	241	241	275	305	305.5	305.5	305.5	308.6	
R	321.3	219.5	209.4	227.1	237.6	223.9	219.6	202.5	186.4	

○ **Minimum Access to Justice (1990 Level): $530.3 (A)**

★ **Bar Leaders FY90 Request: $408.4 (A); $246.9 (R)**

✳ **Legal Services Corp. FY90 Request: $295.3 (A); $178.4 (R)**

KEY
M - 1981 allocation adjusted for inflation
A - Actual dollars appropriated
R - Real dollars appropriated
Minimum Access to Justice =
2 lawyers for every 10,000 poor

APPOINTMENT OF A NEW LSC BOARD

Senator **Bumpers**. I will be very brief, Senator Rudman before I turn these gentlemen over to your tender mercies. [Laughter.]

Mr. Wallace, let me ask you this: Have you had any indication with the President about whom he is going to appoint? Everybody's term is expiring, I understand. Do you have any ideas when he is going to appoint a new Board? Your term expired 2 years ago. When was it? December 1987, I think.

Mr. **Wallace**. Mine expired in July 1987.

Senator **Bumpers**. My question is, do you have any inside information or any contact with the White House as to when they might appoint a new Board?

Mr. **Wallace**. I have had contact with the White House. I don't really have any inside information as to when they are going to do it. If I did, I am not sure it would be appropriate for me to reveal it in public, but I haven't got it. I know they are interested, but as you know——

Senator **Bumpers**. I know it would be appropriate for the chairman of this subcommittee, Senator Hollings and Senator Rudman, as well as the chairman and ranking member of the Labor Committee to write to the President and urge him, strongly urge him to get along with the business of this Corporation.

Mr. **Wallace**. I would be happy to join in such a letter, Mr. Chairman. I have told him two or three times, I think we do need a whole new Board. I have different reasons for that, and some of the reasons you have heard today, but we are at least in agreement on that much, and I hope he will move quickly.

PERSONAL CONVICTIONS

Senator **Bumpers**. Mr. Wallace, let me just ask you a personal, philosophical question. In your heart of hearts, do you think the Government has any business providing legal services for poor people?

Mr. **Wallace**. Yes.

Senator **Bumpers**. Do you think all poor people ought to have access to justice?

Mr. **Wallace**. All poor people, all people, all poor people should have access to justice, yes.

Senator **Bumpers**. Do you think this budget does that?

Mr. **Wallace**. Do I think this budget does this? I think this budget, together with the other private efforts described in my testimony, gives as much access to justice, as much resources available for access to justice and probably more than when I came to this Board.

Does it provide perfect access to justice for all people? I doubt that. The middle income people don't have perfect access to justice. I presume even rich people don't have perfect access to justice. But do I think it provides minimum access to justice? To borrow a phrase from Mr. Whitehurst, yes, I think it does.

Senator **Bumpers**. Central Arkansas legal services tell me that they completed 4,130 new cases last year and turned down twice that number of eligible clients. They are now meeting less than 25 percent of the demonstrated civil legal needs of the poor in an eight county service area in central Arkansas.

Do you think that we are really committed to legal services when statistics are that overwhelming, that we are not meeting the needs?

Mr. **WALLACE**. I cannot comment on the statistics you have given.

Senator **BUMPERS**. I think almost any, any organization, any Legal Services Corporation in the United States would give you the same statistics. I think the president of the American Bar Association just said the same thing on a national basis.

Mr. **WALLACE**. One of the problems we have, Mr. Chairman, is that we do not have accurate and meaningful statistics. We were excoriated in the House 1 month ago for not having those statistics on timekeeping. We have been negotiating with the Appropriations Committees in both Houses trying to get the information we need to run the program. We have not got that information. I don't know what cases they took. I don't know what cases they turned down, and I can't tell you the extent to which they are meeting the needs.

If they tell you that there are legitimate needs that they have not been able to meet, I presume that they are telling the truth. I don't know whether other lawyers met those needs, the needs didn't get met or the needs disappeared, as needs sometimes do.

But it is not perfect; it is minimum, and I think that is as much as the Federal Government has ever provided or is ever likely to provide.

Senator **BUMPERS**. Mr. Wallace, do you think, given the fact that Congress has just overwhelmingly repudiated the Reagan administration over 8 years and specifically, over the last 2 or 3, repudiated virtually all the proposals that have been brought in here by this Board, do you think you should stay on the Board in light of the fact that the Congress has indicated that it seriously and strongly disagrees with you on your approach to this whole thing?

Mr. **WALLACE**. Senator, I have reviewed the record this morning. I don't read it as a record of strong disagreement by Congress. There are things that this committee disagrees with me on that Congress does not disagree with me on.

Senator **BUMPERS**. Let's take migrants. You are proposing to eliminate all of your funds for migrants.

Mr. **WALLACE**. No, sir; we are not proposing that at all. Mr. Wear's statement covers the details of that. The proposal is that the migrant funds be distributed to local programs rather than especially earmarked for migrants. The local programs can use them for migrants or other needs, and they may define those proposals.

Senator **BUMPERS**. But then it is a catch-as-catch-can thing; the migrants may get it or they may not.

Mr. **WALLACE**. They may not get it. That is what local control, as I understand it, is supposed to be all about. But we are not evaporating those dollars. In our proposal, they will go out to the field, and they will be available for that.

Senator **BUMPERS**. Senator Rudman?

Senator **RUDMAN**. Thank you, Mr. Chairman.

LEADERSHIP OF THE CORPORATION

Mr. Wallace, I want to get something straight as to just what is going on. You have only been chairman for several months since Mr. Durant resigned, and you said earlier that you don't have inside directors, which, of course, we know.

Then I take it Mr. Wear is essentially running the Corporation. The day-to-day operations and the policy making is really being handled by Mr. Wear not by the Board; is that accurate?

Mr. **WALLACE**. That has been true as long as I have been on the Board. To the best of my knowledge, the president is responsible for the day-to-day operations. We set policy. There is consultation between members of the Board and the president, but we do not and cannot give him orders except as the Board in open session assembled.

Senator **RUDMAN**. Of course, you are aware of the fact that there were some instances last year where the then president came up here and said he did not know about some things that were done. They were done by Board members; there were orders given out to do things. We don't have to go over old history.

Mr. **WALLACE**. I am not aware of it, so maybe we ought to go over old history.

Senator **RUDMAN**. No; I have spent enough time in my life on this, and it turned out all right. I am not going to go over old history.

I am going to ask the both of you, because I am really not sure who can answer the question, about something in your budget proposal which concerns me. I would state categorically that some of the problems we have had with LSC are not ideological—there a lots of ideological differences with my Senate colleagues, including this one, but we don't deal in bad faith.

Senator **BUMPERS**. You are entitled to be wrong too. [Laughter.]

Senator **RUDMAN**. But we don't deal in bad faith. I have got a problem with your submission here. We are talking about interpreting language here in a way that I don't understand. I want to read something to you. On page 21 of your budget request, Mr. Wear, you state, "Congress has instructed the Corporation to develop and implement a system for the competitive award of all grants and contracts."

COMPETITIVE BIDDING

You are requesting $1 million in fiscal year 1990 for this purpose. You are starting some activities in that area. Am I correct?

Mr. **WEAR**. Yes, sir; that is correct.

Senator **RUDMAN**. I will read to you what the law says. The law says, "A Board of Directors of the Legal Services Corporation composed of individuals nominated by the President after January 20, 1989, shall develop and implement a system for the competitive award of all grants and contracts to take effect after September 30, 1989."

Now, I know the legislative history, because I wrote that language in this room, and it directs a new Board to develop and implement such a system. Now, you are now in the process of, I guess you would have to call it, developing a competitive bidding system.

You certainly aren't going to implement it, but you are developing it. How can you spend money developing it when you are not under the new Board that we have called for?

I don't understand how you are doing this, frankly.

Mr. **Wallace**. May I respond to that?

Senator **Rudman**. First, I would like him to respond. He is president of the Corporation. You said he was running it. So let him respond, then you can respond to it.

Mr. **Wear**. Well, Senator, I think that there are two things. First of all, the Corporation is doing some preparatory work on this that is not prohibited, as I read the statute, in any way.

Senator **Rudman**. You are absolutely right, not prohibited. Not encouraged, but not prohibited.

Mr. **Wear**. Again, it is not prohibited. I am not aware of anyone not encouraging that. I think it is important for the Corporation staff to be prepared with something that the new Board can look at. As Mr. Wallace mentioned, it is something that everybody is going to get a chance to look at and comment on and, if you will, take a shot at.

We are looking at a number of issues that were mentioned. There was some talk earlier about the criminal defense experience. We are looking at that. We are looking at the prepaid legal plans that the AFL–CIO or,—I'm sorry—the United Auto Workers use, among other things, to try to see how this could be done.

Senator **Rudman**. I don't have a problem with that.

Mr. **Wear**. So we can give a running start to the new people as they come in, when they come in.

Senator **Rudman**. Mr. Wear, the staff is not mandated to do this. I wrote this, and there was a lot of flack from a lot of sides. This doesn't say, "shall explore', it says, "shall develop and implement'. I understand the president of the ABA has some problems with that, and we may have to address those.

But I wrote this language. I believe that competition ought to be tried. We said that the lead on this should be taken by a new Board. We didn't say that the Corporation staff shall prepare proposals for a new Board. We said that a new Board shall develop them, and I am simply telling you that what you are doing, by spending money for this, is not within the spirit of what we wrote, and I believe no one in the room at that time would disagree with that.

Now, you wanted to answer that, Mr. Wallace?

Mr. **Wallace**. Yes, Mr. Chairman; I would agree with you that the language in this budget submission is an inaccurate reflection of the bill. The Board doesn't pass on the whole 67 pages or whatever. We pass on the numbers.

You have not instructed us to do it. I have tried to edit my testimony very carefully to make sure that it does not give the impression you have instructed us to do it, because you and I both agree, we have authority under the act to investigate it, and as you have stated, our successors are instructed to do it when they hit the ground at the end of this fiscal year.

Senator **Rudman**. Develop and implement, both.

PREPARATION FOR A NEW LSC BOARD

Mr. **Wallace**. I think it would be irresponsible of me, if I have got the authority to do it, not to give them the running start which hearings and public comments will provide. I have invited that public comment here today from the gentlemen that are here and from anyone else.

I think we have the authority to do it, with which you agree, and if I were the next Board coming in, I would hate to take office in September looking at a statute that tells me to implement competitive bidding and have absolutely nothing in hand to tell me how to go about it.

They may reject what we have done, as they will be free to do, and as this Congress will be free to do if you want to change the language on which you agreed last year. But I think it would be irresponsible for me to sit on my hands and do nothing with this deadline staring us in the face.

We have the authority to act, and that is what we are doing.

Senator **Rudman**. I submit you might be irresponsibile not to, but you have done more than nothing. Are you aware of a letter that was sent out to all LSC recipients by the Corporation advising them that because of this language that they are going to get less than their full funding in 1989. Are you aware of that?

Mr. **Wallace**. I would like to see the language. I am not sure what letter you are referring to.

Senator **Bumpers**. Second paragraph.

Mr. **Wallace**. I see what it says. I don't know—April 28.

Senator **Rudman**. Are you aware of that letter?

Mr. **Wallace**. No; I have not seen the letter before.

Senator **Bumpers**. It was signed by Mr. Wear.

Senator **Rudman**. Mr. Wear, did you authorize that letter to be sent out? It says:

> As you know, 1989 is a funding cycle transition year for the Corporation and its grantees because Public Law 100-459 directs the Corporation to develop and implement a system for the competitive award of all grants and contracts, such bid to take effect after September 30, 1989. The Corporation is developing a system to carry out these directions. It does not wish to foreclose the opportunity to implement competition during the last quarter of 1989. Consequently, the term of your grant will expire on September 30, 1989.

It seems to me that you are really running with the ball, and you were not supposed to. I am going to tell you something. There is something called the Anti-Deficiency Act, and I came very close to getting involved with it when you people went out and bought computers. If there is a lot of money spent on this issue, and then the new Board says, "We don't want competition, we want you to pull the proposal," then everybody who was doing this, has wasted Federal funds. They had better think twice about it, because I think this is not good faith.

That is all I have to say about it. You can't say anything that is going to convince me that you ought to be doing what you are doing. You ought not to be sending out these letters. You are not the new Board.

Mr. Wallace, I think, states it accurately in his statement. I don't take issue with his statement, but he has not seen this; the Board hasn't seen this. This is a major decision. It is the kind of bad faith that, frankly, I have been dealing with around here for the last 8 years.

As a conservative Senator, I am sick and tired of the bad faith being displayed from top to bottom in Legal Services Corporation up to and including this letter.

Now, we are going to get on with my next question.

Senator **Stevens**. Let me see the letter.

Mr. **Wear**. Senator, may I make one comment about that?

I think it is important not to tie the hands of the new Board on this. That was the reason for setting that cutoff time.

Senator **Rudman**. I am not tying their hands.

Mr. **Wear**. We haven't changed their funding.

Senator **Rudman**. That new Board will come in here, Mr. Wear, and discuss this issue with the president of the American Bar Association. I have a lot of respect for him and his group. They can argue that what the Congress did last year was wrong; they can argue that they want to change it. Maybe we will, maybe we won't. But you ought not do anything at this point that sets this in motion. During the negotiations in this room, everybody on all sides in good faith agreed that we would do it but there was so much dissatisfaction with the 6 to 5 split on the Board, for better or for worse, that we wanted a new Board to do it. That was the agreement.

My next question is this. You have sent up a reprogramming.

Senator **Bumpers**. Senator Rudman, if you will yield.

Senator **Rudman**. Yes.

Senator **Bumpers**. I want to insert that letter in the record. That is all.

[The letter follows:]

LETTER FROM TERRANCE J. WEAR

April 28, 1989

Recipient Number:

Dear Mr. :

The purpose of this letter is to advise you that a grant award has been authorized for your program by the Legal Services Corporation for the period January 1, 1989, through September 30, 1989, subject to the terms, assurances, and conditions set forth in this letter and in the enclosed grant documents.

As you know, 1989 is a funding cycle transition year for the Corporation and its grantees, because Public Law 100-459 (102 Stat 2186, 2227) directs the Corporation to develop and implement a system for the competitive award of all grants and contracts, such system to take effect after September 30, 1989. The Corporation is developing a system to carry out these directions and does not wish to foreclose the opportunity to implement competition during the last quarter of 1989. Consequently, the term of your grant will expire on September 30, 1989, absent a specific extension of the grant term by the Corporation.

The 1989 funding levels for the field programs reflect the provisions of Public Law 100-459, the appropriations measure for fiscal year 1989. The total amount of each grant award is equal to nine-twelfths of what would have been your program's 1989 annualized funding level.

The total amount of your grant award is described in the enclosed documents. This grant covers the nine (9) month period beginning January 1, 1989, and ending September 30, 1989. Please note that the payments under this grant award have been adjusted to reflect the temporary funding previously disbursed to your program in 1989, as well as the early release of an additional one-month funding payment for the month of April, which was discussed in my March 30, 1989 memorandum (copy enclosed). Accordingly, on or about May 1, 1989, the Corporation will mail a check to your program in an amount equal to one-ninth of the grant award. The remaining three-ninths of this grant award will be paid to your program in three monthly installments on or about June 1, 1989; July 1, 1989; and August 1, 1989.

Included with this grant award package are grant conditions that apply to your program, a revised "Acceptance of Grant Award" form and the Grant Award Schedule. Before the Corporation will release further payment under this grant, you must sign the revised "Acceptance of Grant Award" form and the grant conditions and submit them to: Grants and Budget Division, Office of Field Services, Legal Services Corporation, 400 Virginia Avenue S.W., Washington, D.C. 20024-2751. In order to ensure timely issuance of the June 1, 1989 payment, the signed "Acceptance of Grant Award" form (which supercedes the form previously submitted) and the grant conditions must be received by LSC prior to May 22, 1989.

Disbursement of these funds to your program is conditioned on its compliance with the terms, conditions, and assurances contained in the grant award package, the LSC Act, as amended; the legislative "riders" associated with the Corporation's appropriation (as contained in Public Law 100-459); and all rules, regulations, policies, guidelines, instructions, and other directives promulgated by the Corporation, including LSC's Audit and Accounting Guide for Recipients and Auditors. Expenditure of funds received pursuant to any grant awarded herein also signifies your program's acknowledgement and acceptance of the terms and conditions contained in this letter and the terms, conditions, and assurances contained in the grant award package.

Should you have any questions, please contact Mary C. Higgins, Director of the Office of Field Services, at (202) 863-1837.

Sincerely,

Terrance J. Wear
President

ACCEPTANCE OF GRANT AWARD

Recipient Name:

Recipient Number:

Grant Type	Grant Amount
Basic Field	

Applicant/Recipient acknowledges that the offer of the above-listed grant is made subject to the terms, conditions, and assurances associated with such grant and agrees, as a condition precedent to accepting such grant award, to comply with such terms, conditions, and assurances.

Name of Program Director	Name of Chairman
Signature	Signature
Date	Date

1989 SPECIAL GRANT CONDITIONS - ALL RECIPIENTS

Recipient Name:

Recipient Number:

The recipient hereby assures and certifies that:

1. The recipient shall give written notice to the Director of the Office of Field Services thirty (30) days prior to closing, transferring or otherwise changing any office location.

2. The recipient shall give written notice to the Director of the Office of Monitoring, Audit and Compliance of any apparent theft, loss, embezzlement or the like of LSC or LSC-derived funds over $500 held by the recipient within ten (10) calendar days of the program's detection of such occurrence.

3. The recipient shall maintain written documentation regarding the use of national and state support centers and regional training centers. Such documentation shall include at a minimum: (1) the date of the request; (2) the name of the center being used; (3) the name of the requestor; (4) a brief description of the type of service requested; and (5) the date on which a client retainer agreement was executed by the client on whose behalf the service is being requested, if applicable.

4. In the event that any malpractice action is filed against the program or its subrecipient(s), the recipient shall give written notice to the Director of the Office of Monitoring, Audit, and Compliance within fifteen (15) calendar days of such an occurrence.

5. The recipient shall give prior written notice to the Director of the Office of Monitoring, Audit and Compliance for any transfer(s) of funds between the LSC accounts and any other account(s) if such transfer(s) will amount to $5,000 or more, in the following instances:

   (a) when LSC funds are transferred to a non-LSC bank account;

   (b) when non-LSC funds are transferred to an LSC bank account; or,

   (c) when non-LSC funds are used to cover costs associated with the performance of non-LSC grant related activities.

6. In the event that a Notice of Corrective Action is issued by the Corporation to the recipient, the recipient shall comply with all the terms and provisions of such Notice.

7. The recipient shall provide to the Director of the Office of Field Services by May 1, 1989, a copy of the recipient's guidelines for income and asset ceilings used in determining client eligibility for services, pursuant to 45 C.F.R. Sections 1611.3(a) and 1611.6(a).

8. The recipient shall provide training on an annual basis for its governing body in order to assure maximum effective participation of individual board members, especially eligible clients, in decisions of that body. Such training shall provide, at a minimum: 1) all current board member training materials produced and provided by the Corporation to the recipient for that purpose, and 2) an individual (either an executive director or his designee) to explain the training materials and to answer questions. The recipient shall be required to provide at least a thirty-day (30) notice of this event to each member of its board in order to facilitate maximum participation. The recipient shall be further required to provide to the Office of Field Services within ten (10) business days of the conclusion of the training event the following information concerning the training event:

   (a) a list of participants;

   (b) a list of trainers, along with the name of each trainer's affiliated organization;

(c) a copy of the agenda;

(d) a schedule specifying the costs of the training, as well as the source of funds used; and,

(e) a list identifying by name the materials distributed at the training.

9. The recipient shall give notice to the Director of the Office of Monitoring, Audit and Compliance of a change in the recipient's executive director within ten (10) calendar days of such occurrence.

Name of Program Director	Name of Chairman
Signature	Signature
Date	Date

REPROGRAMMING REQUESTS

Mr. SMEGAL. Senator, may I just make one comment on the letter?

Senator RUDMAN. I have really got limited time here, and the chairman wants to move along. On April 20, 1989, you wrote to the Honorable Robert C. Byrd, chairman of the committee with copies to myself, Senator Hollings, and other appropriate people, advising us of a reprogramming on the use of attorney's fees where if more than $100,000 comes in, up to 75 percent of that is going to be redistributed to other organizations that have a lot of clients who are very poor.

That is a very interesting proposal. It is a request for reprogramming. What is your intention if the Congress writes back and says—that is to the April 20, 1989, letter—that, "We disapprove this reprogramming. We do not approve this regulation?" Would you then not implement that regulation?

Mr. WEAR. Under the statute, Senator Rudman, the two Appropriations Committees are provided 15 days notice of the regulation before it is submitted in final form to the Federal Register.

The Board has voted that regulation out. It is my job to submit that regulation. Obviously, if people on the Hill have comment about it, I will certainly listen to what they have to say, but my charge would be to send that regulation to the Federal Register and to publish it.

Senator RUDMAN. So in other words, what you are telling me is that irrespective of what four committees of the Congress do, this regulation is going into effect; is that your testimony?

Mr. WEAR. As I said——

Senator RUDMAN. Is that your testimony? That is a simple question.

Mr. WEAR. I would be glad to listen to what you have to say.

Senator RUDMAN. I didn't ask you if you wanted to listen, Mr. Wear. I have asked you a pretty simple question. I just want to make sure. I think I understood your answer. I just want it clarified for the record. This regulation is going into effect; am I correct?

Mr. **Wear**. Absent good reasons to change it or not to do that, it will.

Senator **Rudman**. I am sure that Senator Byrd, the chairman of the Appropriations Committee, and Mr. Whitten and others are going to find it interesting. This is the only Federal entity that sends up a reprogramming and when it is denied, goes ahead and implements it. If you want to know why you have had a lot of trouble, that is part of it.

Let me point out to you that I understand that your proposal was put out for public comment and received 375 comments; 374 were opposed. [Laughter.]

Mr. **Wear**. A large number were; that is accurate.

Senator **Rudman**. That is not a large number, Mr. Wear. I am from New Hampshire where we try to deal with precision with the English language; 375 were received, and 374 were opposed. You are going to tell me that you intend to go forward with the regulations and ignore 374 out of 375 comments. That you pay no attention to that, Mr. Wear.

I am going to quit my questioning right now, because frankly, I am disgusted with you; I am disgusted with the way this thing is being run. There has been no give-and-take here. I have tried to cooperate, meet you halfway. Every time I meet you halfway, you go two-thirds of the way.

Mr. Chairman, I want to hear the SBA. I want to vote. We are going to have to straighten this whole mess out after this group is gone.

Mr. Wallace, I believe you are sincere, but I have a lot of problems with the way this operation has been run lately with Mr. Wear.

I don't have any questions.

Mr. **Wear**. Mr. Chairman? May I say one thing?

Senator **Bumpers**. Certainly.

Mr. **Wear**. Thank you, Mr. Chairman.

In the letter that came to the committee, there is also an explanation of what was proposed in the regulation and what was done to accommodate the interests of the commentors on that, and I would ask that that be reviewed and made a part of the record here, too.

Senator **Bumpers**. Without objection.

[The letter follows:]

LETTER FROM TERRENCE J. WEAR

April 10, 1989.

Honorable Robert C. Byrd,
Chairman, Senate Committee on Appropriations, United States Senate, 136 Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: Pursuant to Public Law 100–459, 102 Stat. 2226 (1988), the Legal Services Corporation's ("LSC" or "Corporation") fiscal year 1989 appropriations bill, the Corporation gives notice of revision to 45 C.F.R. Part 1609, the Corporation's regulations on fee-generating cases. A copy of the revised rule approved by the Corporation's Board of Directors on March 3, 1989, is attached, with a discussion of the changes in a draft Federal Register notice that will accompany the final rule.

The revisions are intended to ensure that recipients do not compete with private attorneys for fee-generating cases, that recipients are not tempted to use scarce legal services resources to represent clients in fee-generating cases, in lieu of non-fee-generating cases, and to more equitably distribute any windfall of attorneys' fees to the Corporation's basic field programs.

Generally, the revisions require that, with certain exceptions, 75 percent of all attorney's fees received by a program in a calendar year, over a threshold amount of $100,000, be credited toward funds payable to that program under a grant from the Corporation. This provision is applicable to attorney's fees generated from lawsuits supported with funds from the Corporation and with other non-public funds. Moneys retained under the crediting procedure will be distributed by LSC to basic field programs that have the lowest available funds per poor person.

The rule also revises the requirements for determining the availability of other adequate representation in fee-generating cases and adds a presumption that all fee-generating cases undertaken by a program are supported with LSC or non-public funds. Finally, technical revisions are made to 45 CFR Part 1609 to conform certain provisions to the changes that were made by this rule.

Please let me know if you would like additional information.

Sincerely,

TERRANCE J. WEAR,
President.

COMMITTEE DECISIONS

Senator **RUDMAN**. The chairman, I know, is planning to meet with me, and the House will meet. We will notify LSC of our decision. I don't know what it is. Maybe we will approve it. I doubt it, but if we disapprove it, I just wanted the record to show that this is going to go into effect and we will just have to address that later on.

Senator **BUMPERS**. Senator Kasten?

Senator **KASTEN**. I don't have any questions, Mr. Chairman.

Senator **BUMPERS**. Senator Stevens?

REGULATION PROCEDURES

Senator **STEVENS**. When does it go into effect, Mr. Wear?

Mr. **WEAR**. The procedures are this, Senator. The regulation is submitted to the two Appropriations Committees. Those committees have 15 days to review it. After that, the regulation goes to the Federal Register. That takes about 3 days to be printed. The regulation would be effective 30 days after date of printing.

Senator **STEVENS**. You have the discretion to set that 30 days and extend it, don't you?

Mr. **WEAR**. I have discretion as to when it goes to the Federal Register, yes, sir.

Mr. **WALLACE**. Mr. Chairman, can I say one more thing for the record?

Senator **STEVENS**. You can when I am finished.

Mr. **WALLACE**. I'm sorry, Senator Stevens. I apologize.

Senator **STEVENS**. I would like to ask Mr. Wear why the requests of the congressional committees were ignored

Mr. **WEAR**. I don't believe they have been, Senator.

Senator **STEVENS**. Do you think you accommodated the request of the committees? I haven't seen the letter you have just asked to be put in the record. Could you summarize it for me? What did you change in order to accommodate the request of the committees?

Senator **RUDMAN**. If I could just comment—hold on, Mr. Wear—what we have here, I will say to my friend from Alaska, is a reprogramming request for regulation. We have required all regulations to come up here for approval ahead of time because of some problems we had in the past.

This one proposes a change in what legal services groups do around the country with fees that they recover from fee-generating cases.

There is a lot of disagreement about what LSC wants to do because many believe that this is going to hurt the rights of poor people to be represented in cases where nobody in the bar will take the case—nobody will take the case and they will take it for a fee.

They have asked us to recapture the fees. We are going to say no, according to what my discussions with Senator Hollings were, but they are going to go ahead and do it anyway. That is the long and short of it.

Senator STEVENS. I heard about that at home, Senator, but I just wanted an indication from Mr. Wear where he said that he thought he had accommodated the position that you just outlined.

Senator RUDMAN. There is the letter.

CONCERNS WERE ACCOMMODATED

Senator STEVENS. Is that your position, that you have accommodated the committee's concerns?

Mr. WEAR. Senator, we have attempted to accommodate the commentors who wrote in.

Senator KASTEN. 370 or whatever people?

Mr. WEAR. Yes, sir; yes, sir. We created, for example, a $100,000 floor where any program earning up to $100,000 keeps that. We modified the provision further to only take back 75 percent of the fees; the program keeps the other 25 percent.

We have made changes in when the regulation will take effect. And there are, I think, some others that are outlined, that may be outlined in the letter, as well as in the submission that came up.

But we did make substantial changes in the regulation in response to the questions that were raised by the commentors.

Senator STEVENS. And this revised rule is being published to become effective rather than have any further comment upon the revisions, right?

Mr. WEAR. Yes, sir; the comment period closed. We took into consideration those comments and made the changes I have mentioned plus, I think, one or two others that now escape my memory.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator BUMPERS. Thank you, Senator Stevens.

Mr. Wallace, if you can be very brief?

Mr. WALLACE. Very brief. On this regulation, I ought to say, Mr. Chairman, the record should reflect, it was modified substantially and passed by an 8 to 1 vote of the Board, not by a 6-to-5 pencil thin majority that some people referred to.

Mr. Wear has, under the act, very little discretion, has no discretion to speak of. The Board adopts regulations, and he doesn't have a whole lot of choice about what to do with them.

When I was up for confirmation, the Senate put me under oath and asked me on my oath would I exercise independent judgment and not pay any particular attention to what I heard from the

White House. I have kept that oath and will continue to keep that oath.

The Senate did not ask me, although they should have, whether I would use my independent judgment with regard to communications from the Senate. We are set up as a private corporation. I don't know what other Federal agencies do when they get reprogramming letters, because we are not Federal agencies.

I think we should be, but I took an oath to use independent judgment. I think every member of the Board has done that, and I don't see how I can do anything else. If the Congress tells us they think we ought to do something else or relevant committees of the Congress tell us they think we ought to do something else, then it is the Board that should and will look at that recommendation.

Senator BUMPERS. Mr. Wallace, that statement will just evoke another tirade from all of us, so I am just going to pretend you didn't say it.

Mr. Smegal, I didn't want to cut you off. You had a statement a moment ago. If you could be very brief in what you wanted to say?

Mr. SMEGAL. Yes, Mr. Chairman. I just want to make a point with respect to Mr. Wear acting on his own. We had a special reference by him in his opening statement to pages 33 and 34 in the budget submission. I wanted to point out that is another action that did not ever get to the Board for either discussion or vote, his proposed rider that would attach to these OMB regulations.

The first time I saw it was when I got a copy of it from the Corporation. It is another one of his acts on his own.

LETTER AND ADDITIONAL COMMITTEE QUESTIONS

Senator BUMPERS. I seriously avoided that in my questioning. I had a question on that, but I am going to have additional questions to submit for the record and that same right and privilege will be extended to all the other members of the committee.

Senator Hollings, our subcommittee chairman, couldn't be with us this morning as he is detained on the floor of the Senate with the consideration of the budget resolution. I have several questions to submit on his behalf and will place in the record a letter he received from the South Carolina Bar Association.

Thank you all very much for being here this morning. We appreciate you being here.

Senator RUDMAN. Good luck, Mike.

Mr. WALLACE. Senator, thank you. Good luck to you. Mr. Chairman, thank you for your patience; Senator Kasten, Thank you.

[The information follows:]

LETTER FROM JOHN E. JOHNSTON, PRESIDENT, SOUTH CAROLINA BAR

MARCH 30, 1989.

Honorable ERNEST F. HOLLINGS,
United States Senate, 125 Russell Senate Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: Recently the Board of Governors of the South Carolina Bar renewed its support of the Legal Services Corporation, and resolved to ask our Congressional delegation for your support as well. South Carolina lawyers show their commitment to legal services for the poor through support of two programs in particular. Seventy-two percent of eligible attorneys participate in the South Carolina Bar Foundation's IOLTA (Interest on Lawyer Trust Accounts) program. More than 70 percent of IOLTA funds are awarded to programs providing civil legal services to poor people in the state. The South Carolina Bar's Pro Bono Program has recruited 34 percent of available attorneys to provide volunteer civil legal services to poor clients. This represents almost twice the national average.

Legal Services programs in South Carolina work closely with the South Carolina Bar and the South Carolina Bar Foundation through the Pro Bono and IOLTA Programs. Due to the specialized nature of many areas of poverty law, such as public benefits cases, public and subsidized housing, and consumer law, the best way to deliver legal services to poor clients is through a combination of public and private efforts. In order to maintain this blend of public and private assistance, funding through the Legal Services Corporation is essential.

I realize that at one time some legal services organizations developed the reputation of being "activist" organizations which created unnecessary litigation for the purpose of challenging existing law. This is certainly not the situation in South Carolina and I do not believe that this condition exists anywhere in the United States today. Legal services organizations are all controlled by local boards which are selected by a number of local representative organizations. Legal Services are provided to poor people, not to causes.

I hope that you will be able to support reasonable funding for the Legal Services Corporation. Don't hesitate to let me know if you would like to have further information.

Sincerely,

JOHN E. JOHNSTON,
President.

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

FY 1990 Budget Request

Q: Mr. Wallace, your FY 1988 and FY 1989 Budget Requests which sought to reduce the overall appropriation for legal services to the poor were overwhelmingly rejected by the Congress. Today, you appear with an FY 1990 budget that proposes to do much the same thing as your earlier requests. What additional rationale can you offer the committee for this latest proposal to eliminate funding for essential support and migrant services?

A: Legal Services Corporation was established for the purpose of providing direct day-to-day legal assistance to clients eligible for aid because of indigence. The Corporation, therefore, proposes to concentrate its resources to fulfill its congressional mandate of providing direct delivery of legal assistance. Thus, though it is correct that the FY 1990 Budget Request is less than was appropriated in FY 1989, the budget figure does not reflect a reduction in direct delivery of legal assistance.

The overall reduction in funding requested by the Corporation is the result of savings which would be realized from eliminating unnecessary or inefficient expenditures in three areas: support centers, training and computer-assisted legal research (CALR). The Corporation proposes to realize savings of $13,000,000, in part, by eliminating National Support Centers (savings of $7,228,000) and State Support Centers ($7,843,000), although some of the savings would be offset by increased expenses in Management and Administration for research and development of competition.

The Corporation's Board of Directors believes that adequate resources are currently available to LSC grantees to meet their research demands. Where the necessary information does not exist, nothing in the Corporation's FY 1990 Budget Request prohibits the grantees from contracting with another service provider to obtain the necessary research, much like what is done in private sector law firms.

The Corporation's Directors continue to be concerned that the National and State Support Centers are not meeting the Congressional mandate to provide economic and efficient legal assistance to the poor. National Support Centers were originally established to lead a national movement of "law reform." According to early advocates of these support centers, they were funded solely for the purpose of bringing test cases and advocating legislative change. As experts in various types of welfare or poverty law, the National Support Centers were to set a national agenda of political and social reform. Such an agenda often ignores the needs of the individual poor person, and in fact, in some instances is counterproductive.

Training is provided by many organizations, and thus, an unnecessary, duplicative expenditure of LSC funds. Bar organizations provide a variety of training events, since continuing legal education is a professional requirement for most attorneys.

Advances in computer-assisted legal research technology and equipment have brought extensive research capability in-house for many programs. The Corporation allocated funding several years ago to purchase computers for all LSC basic field programs. Additionally, LSC has a contract with Westlaw that enables local programs to use that legal database at a reduced rate.

For these reasons, the Corporation proposes to allocate approximately 96% of its funding to direct legal assistance to the poor, rather than to auxiliary programs. Unnecessary Corporate expenditures will be eliminated.

Quality of Services

Q: Mr. Wallace, I note that your budget request says nothing about either the quality or quantity of legal services being provided to poor people, which is of course, what this program is all about. Why is your Budget Request silent on the activities of your grantees in representing clients?

A: The purpose of the Budget Request is to provide a general view of what the Corporation believes it will need in the upcoming year.

However, the FY 1990 Budget Request does go into explicit detail on the activities of grantees in the "Budget in Brief" section of the Budget Request (pp.16-19). This section delineates activities for the Basic Field Programs, the Native American Programs, and the Law School Clinics. It also explains how LSC funds have encouraged a significant increase in non-LSC funds for LSC grantees.

In addition, the Corporation recently completed the 1987-1988 LSC Fact Book, a copy of which was provided to this Subcommittee's Chairman and Ranking Member. Unlike the Corporation's Budget Request, the two-hundred fifty-three page Fact Book explicitly details the quantity of legal assistance provided LSC clients, where the material is available. Where information is unavailable, better time-keeping by LSC grantees is required in order for the Corporation to accurately assure the Congress that scarce Federal resources are efficiently expended.

Q: How many clients were serviced in 1988 by programs that you fund?

A: Case Service Reports, which will show the number of clients served in 1988, are being analyzed. However, LSC-funded programs have reported in their 1989 applications for funding that 1,444,850 cases were closed in 1988. According to the 1987 Case Service Reports LSC-funded programs represented 1,401,563 clients and closed 1,421,805 cases.

Q: Please tell me your view about the quality of services poor clients receive from your recipients.

A: While the Corporation does everything possible to ensure compliance with the LSC Act and Regulations and appropriations riders, and to provide the highest quality of legal assistance to eligible poor clients, two phenomena make it difficult to give the assurance that high-quality legal assistance is provided. First, the Corporation has been placed at a disadvantage in monitoring and evaluating actual delivery of legal assistance because accountability for expenditure of Federal funds is extremely limited. And second, because the Corporation has been compelled to provide presumptive refunding to LSC grantees, there is no guarantee that the best, most efficient services are being provided.

The Corporation anticipates that competition will improve both the quality and quantity of legal services to the poor.

One noteworthy study conducted on the quality and efficiency of delivery of legal aid gives perhaps the best estimate on the quality of legal assistance by the LSC grantees, and recommendations to improve delivery of legal aid to the poor. See Appendix A for the relevant portion of the results of "Legal Services for the Poor: Time for Reform," (by Douglas J. Besharov, Resident Scholar at the American Enterprise Institute).

Q: What assistance does the Corporation provide to its grantees to assist them in maintaining or improving the quality of services provided to clients?

A: LSC assists recipients in improving the quality of services provided to clients by, among other things, conducting on-site reviews and by enforcing existing regulations designed to ensure efficient, effective, economical and high quality legal assistance.

During on-site monitoring reviews, LSC evaluates documents and conducts interviews in order to assess the quality of legal services provided by the recipient. LSC's review of a recipient's activities and operations often encompasses an analysis of (1) intake, case acceptance, case review and case file maintenance procedures, (2) tickler systems, (3) client grievance procedures, and (4) priority setting. An assessment of these procedures is a key indicator as to whether a recipient has the systems in place to ensure timely, efficient, and effective service delivery.

In addition to procedural considerations, LSC often reviews sample pleadings and briefs. In this regard, judicial opinions and related determinations are helpful indicators of the quality of services provided by program attorneys.

LSC also conducts interviews with program attorneys to discuss their duties and responsibilities with regard to particular cases as well as their caseloads, quality of supervision, and training and development. In addition to program attorneys, LSC interviews board members, private attorneys in the program's service area, judges and bar association leaders. These individuals often provide additional comments on the quality of services provided by LSC's recipients.

Subsequent to gathering facts relating to the quality of the services LSC provides its recipients with feedback. Specifically, each monitoring report contains written recommendations relating to maintaining or improving the recipients' operations and activities. Furthermore, recommendations contained in final monitoring reports are at times incorporated into corrective action notices requiring recipients to correct identified deficiencies promptly.

Recipients are often responsive to LSC's recommendations for improvements. For your review and future reference, Appendix B includes several examples demonstrating that recommendations made by LSC to recipients are in fact implemented.

National and State Support Centers

Q: Mr. Wallace, last year the Corporation proposed that funding for national and state support programs be eliminated but at the same time proposed at least a portion of the support money to basic field programs.

Now we have this year's budget stating that "basic field programs are free to use their funds to purchase support services." No additional funds have been proposed for this purpose. How do you reconcile your claim that support needs can be met with your failure to allocate any money to pay for these services? Are basic programs to be reduced in [or] to meet support needs?

A: Careful examination of the Amended FY 1989 and FY 1990 LSC Budget Requests illustrates that the requests are nearly identical. The major difference is that the FY 1990 Budget Request asks for $444,690 more for direct delivery programs, than was requested in FY 1989.

The rationale for discontinuing direct funding for support centers is two-fold. First, the majority of the basic field grantees are mature programs, and have been in existence since nearly the beginning of the Corporation's origins. Because the programs are required to set priorities as a condition to receiving LSC funds, they have had more than fifteen years of specialization in their priorities, and have developed an expertise in their priority areas, obviating the need for continued direct funding of the support centers whose primary function supposedly is specialized research.

Second, since the Corporation's inception, legal research technology has vastly improved, such that much of the necessary research is available electronically. For this reason, each grantee has had access to Westlaw or some other data base. See Appendix C for a list of specialized law areas available through the Westlaw data base.

Outside Funding

Q: Mr. Wallace, on page 30 of your budget narrative, you state that, "importance of Federal funding for legal services for the poor has declined in the past several years..new and growing sources of outside funding are projected to overtake (and eventually dwarf) the Federal funds provided for legal services through the LSC Budget."

It is certainly true that state and local governments, bar associations, and others have attempted to take up the slack as Federal dollars for legal services declined in the 1980s. However, it is also true that even the large infusion of non-LSC funds has not been enough to offset the combined effect of reductions and inflation on the LSC budget. Moreover, LSC dollars still comprise more than 70% of the total funds expended for legal services for the poor. Under these circumstances, how can the Corporation justify a reduction in the LSC appropriation?

A: During current times of fiscal austerity successive Presidents and the Congress have stressed the importance of doing more with less. The current budgetary environment has caused every Federal agency to look for ways to produce the greatest good at the lowest cost. Such an environment has not gone unnoticed by the Legal Services Corporation's Board of Directors, and is chiefly responsible for the LSC FY 1990 Budget Request.

With this in mind, two considerations should be mentioned. First, the Legal Services Corporation, from its inception, was meant to be a pilot program or seed project, not a permanent Federal agency. According to the

"President's Advisory Council on Executive Organization" (The Ash Council),

> The transfer of the Legal Services Program to a government corporation would be a step toward reprivatization of what has traditionally been a function of the private sector. While it may well have been necessary to give the program its start by placing it in a line operation of government, it should not become a permanent fixture there because legal representation of a special group should be viewed as a temporary role which does not fit within the more permanent and established roles of government ("Memoranda for the President of the United States: Establishment of a Department of Natural Resources Organization for Social and Economic Programs").

As a seed project, the Corporation's raison d'etre was to encourage wide private-sector participation in pro bono legal assistance to those unable to pay for it. The Corporation's FY 1990 Budget Request recognizes the continued need for some Federal assistance, while also acknowledging the original intention for the Corporation's creation.

Additionally, there is clear evidence that the purpose for which the Corporation was created is being accomplished, engendering greater private bar involvement. For example, LSC provided seed money to many state bar associations to help them organize Interest On Lawyers Trust Accounts (IOLTA) programs. Now forty-eight states have programs and are providing over $30 million annually for legal services for poor individuals. Between FY 1985 and FY 1988, total funds available to our grantees from non-LSC sources have increased from $81,450,358 to $124,856,499. Funds from non-LSC sources, as a percentage of total program funding, are growing at an increasing rate. Total non-LSC funding grew from approximately $31 million in 1977 to approximately $123 million in 1988, an increase of 397%, while annual LSC funding grew 244% during the same period.

In FY 1989, it is estimated that $26.4 million in non-LSC Federal funds will be given LSC grantees, as well as $30.9 million in state and local funds, and $64.7 million in funds from private and miscellaneous sources.

Migrant Programs

Q: Mr. Wallace, I understand your proposed budget would eliminate funding for migrant programs and would allocate money previously earmarked for migrant services to basic field programs. Am I correct that your proposal will redistribute this money on a per capita basis to all poor people, without in any way targeting services for migrant farmworkers?

A. The money which was previously earmarked for migrant farm-worker services is included in the basic field line and will be allocated to programs based on the general poverty population, including migrant farmworkers. Thus a separate line item for migrant services in the budget is not necessary. It will be the responsibility of each program, through its priority setting process, to determine the amount of program resources (basic field funding) to be allocated for legal services to migrant farmworkers within its service area.

This was done because the Corporation lacks sufficient evidence from programs receiving migrant funding to show that providing funds for migrant programs separate and distinct from basic field funding is an efficient and effective means of funding the delivery of these services.

Regulation Affecting Private Funds

Q: Mr. Wear, I understand the Corporation has proposed that private funds can no longer be used to represent clients who are otherwise poor but do not meet the LSC eligibility guidelines. Recipients can not use private funds to represent elderly, disabled, victims of domestic violence, the homeless and others that may not meet LSC eligibility requirements, but are otherwise unable to afford adequate legal counsel. Private grant funds often do not permit the use of a means test for members of client groups. Why do you want to prevent recipients from representing such clients?

A: The final rule as adopted by the LSC Board does not preclude the use of all private grants for special needs groups. The rule is intended to redirect private funds exclusively to the still unmet need of financially eligible poor persons for legal assistance. In an attempt to balance its concern for special needs groups, such as the elderly and disabled, with its interest in ensuring that its federally funded programs focus their efforts on legal services to the financially eligible poor, the Board included in the final rule an exception that will allow recipients to accept private grants when the funds are used as matching funds for a grant under Title IIIB of the Older Americans Act, Section 142 of Title I of the Developmental Disabilities Assistance and Bill of Rights Act, or any other statutory scheme requiring matching funds as long as the private funds do not exceed the public funds in a given transaction.

In addition, the rule authorizes the use of private funds to provide legal assistance to clients if the client's annual income level does not exceed the national eligibility level (125% of poverty) set out in Appendix A of Part 1611. Under this provision, recipients whose client eligibility standards for services paid for with LSC funds are below the basic national eligibility standard can apply the national standard to private funds. Use of LSC's national standard for eligibility will assure that recipients of legal services are nonetheless indigent and in financial need of free legal assistance.

The only grants that prohibited means tests specifically identified by commenters were certain public grants for elderly and disabled. Data from LSC's most recent funding applications were consistent. Total projected non-LSC funds for 1988 were $124,856,499, which includes other federal and state grants ($58,511,957) and private grants ($66,344,542); LSC funding for 1988 was $261,046,525. See LSC 1987-1988 Fact Book, 10, 15. LSC programs reported in the 1989 Funding Applications receiving $3,592,291 in private funds in 1988 that could be used for, among other purposes, the representation of financially ineligible clients. Most of these grants had other purposes as well. Thus, the total sum of private grants that are affected by the change with respect to eligibility is small relative to the total private grants; to the extent the approximately $3.6 million was used for representation of clients, the rule would require that the clients meet the national eligibility standards. The concentration of these resources on eligible clients will further the fundamental basis of the LSC Act that financial need is a prerequisite of assistance.

Competitive Bidding

Q: As you know, the FY89 Appropriations measure states that

> "(A) Board of Directors of the Legal Services Corporation composed of individuals nominated by the President after January 20, 1989 and subsequently confirmed by the United States Senate, shall develop and implement a system for the competitive award of all grants and contracts, including support centers, to take effect after September 30, 1989."

I understand that the Corporation has voted to spend $100,000 on 5 hearings on competitive bidding this summer? Given the unequivocal language of the appropriation bill what possible justification does this board have for developing a competitive bidding system?

A: On March 3, 1989, the LSC Board of Directors directed the staff to prepare materials necessary for the Corporation's consideration of competitive bidding. Given the language of the FY 1989 Appropriations Act, the Board felt it only prudent to investigate competition as it is currently employed in other fields of public service. In addition, the Board plans to hold up to five public hearing on the subject of competition to lay the groundwork for the development and implementation by a subsequent Board after October 1, 1989. The first of these hearings to take comment on the competitive process will be held on June 12-13, 1989 in Illinois. The Board believes that not laying the initial groundwork would be irresponsible, and counter to the imperative to proceed given the Corporation by the House and Senate conferees to the FY 1989 Commerce, Justice State Appropriations Conference.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

FY 1990 Budget Request

Q: Mr. Wear, page 4 of your budget document says "the Board proposes to eliminate direct funding of 'backup' programs that have proven to be of questionable value to basic field programs." On what evidence do you base your claim that support programs have proven to be of questionable value?

A: National support centers were originally established to lead a national movement of "law reform." Earl Johnson, former director of the OEO legal services program, stated in Justice and Reform that in order to increase the effectiveness of the OEO program's efforts at law reform, the Office of Legal Services established "special national agencies funded solely for the purpose of bringing test cases and advocating legislative change." As experts in various types of welfare or poverty law the national support centers were to set a national agenda of political and social reform. For this purpose, individual poor clients with their own particular and pressing needs are irrelevant. The support centers were set up specifically because the founders of the federal legal services program feared that local legal services program offices would be so occupied with the legal problems of individual clients that they would neglect the "true" purpose of the program - the implementation of a social reform agenda. Despite the years since creation of the Corporation, there is no indication that the centers have altered their original purpose of law reform.

The Corporation assesses the value support centers have on basic field programs based on the extent to which they provide direct legal assistance to LSC-eligible clients. The support centers do not maintain adequate documentation to indicate what services they actually provide. However, in their applications for FY 1989 funding, very few basic field legal services programs report requesting co-counseling assistance from national support centers. Basic field programs report that most of their "service requests" to national support centers are requests for publications. National support centers report spending more of their LSC funding to produce publications than to co-counsel with basic field programs.

On this basis, the Corporation's Board of Directors believes expending funds on support centers to be an inappropriate and unnecessary use of Federal resources.

Q: Last year, we discussed the Board's appointment of a subcommittee to study this issue and how they had never been able to complete their analysis or issue a report. Is this still the case?

A: In October of 1987, the Board decided that, given its preference for directing all available resources to basic day-to-day legal services, a lengthy study would not be necessary and would not alter policy with regard to national funding priorities. However, the Board's decision would not have altered the field programs' rights to purchase support services on an "as-needed" basis. The board still believes this to be the most effective manner of allocating LSC's scarce resources, and therefore, does not intend to further conduct research on this issue.

Q: I understand that surveys have shown that the programs utilize these centers extensively and support their continued existence. Do you have evidence to the contrary?

A: As stated above, basic field programs report that most of the "requests" are for publications, which often means that the programs are on the support centers' mailing lists.

Regulation Affecting Private Funds

Q: With a limited exception, you have proposed that private funds can no longer be used to represent clients who do not strictly need the LSC eligibility guidelines. This could include the elderly, disabled, victims of domestic violence, the homeless, and others. Private grant funds often do not permit the use of a means test for members of these client groups. Why do you want to prevent recipients from representing such clients with private funds? What evidence of abuse do you have which prompted these regulations?

A: The final rule as adopted by the LSC Board does not preclude the use of all private grants for special needs groups. The rule is intended to redirect private funds exclusively to the still unmet need of financially eligible poor persons for legal assistance. In an attempt to balance its concern for special needs groups, such as the elderly and disabled, with its interest in ensuring that its federally funded programs focus their efforts on legal services to the financially eligible poor, the Board included in the final rule an exception that will allow recipients to accept private grants when the funds are used as matching funds for a grant under Title IIIB of the Older Americans Act, Section 142 of Title I of the Developmental Disabilities Assistance and Bill of Rights Act, or any other statutory scheme requiring matching funds as long as the private funds do not exceed the public funds in a given transaction. In addition, the rule authorizes the use of private funds to provide legal assistance to clients if the client's annual income level does not exceed the national eligibility level (125% of poverty) set out in Appendix A of Part 1611. Under this provision, recipients whose client eligibility standards for services paid for with LSC funds are below the basic national eligibility standard can apply the national standard to private funds. Use of LSC's national standard for eligibility will assure that recipients of legal services are nonetheless indigent and in financial need of free legal assistance.

The only grants that prohibited means tests specifically identified by commenters were certain public grants for elderly and disabled. Data from LSC's most recent funding applications were consistent. Total projected non-LSC funds for 1988 were $124,856,499, which includes other federal and state grants ($58,511,957) and private grants ($66,344,542); LSC funding for 1988 was $261,046,525. See LSC 1987-1988 Fact Book, 10, 15. LSC programs reported in the 1989 Funding Applications receiving $3,592,291 in private funds in 1988 that could be used for, among other purposes, the representation of financially ineligible clients. Most of these grants had other purposes as well. Thus, the total sum of private grants that are affected by the change with respect to eligibility is small relative to the total private grants; to the extent this near $3.6 million was used for representation of clients, the rule would require that the clients meet the national eligibility standards. The concentration of these resources on eligible clients will further the fundamental basis of the LSC Act that financial need is a prerequisite of assistance.

Competitive Bidding

Q: With respect to competitive bidding, there has been some experience with competitive bidding with contract services for criminal defense work. Many studies have concluded that these activities were not successful: costs went up and quality disintegrated. For Example, the Spangenberg Group report states that competitive bidding that results in the replacement of contractors from year-to-year results in substantial disruption in the indigent defense system as well as added costs. Can you comment?

A: The Corporation has contacted the Spangenberg Group and expects to receive a bibliography from Mr. Spangenberg in the near future. The Corporation intends to carry out a complete review of the work performed to date by the Spangenberg Group and other organizations providing research in this field. However, to the extent that this research focuses on annual funding cycles, it is inapplicable in that the Corporation anticipates a three year funding cycle.

Further, the Corporation understands from recent discussions with Mr. Spangenberg that the American Bar Association, instead of recommending against competition, is considering issuing standards for the competitive provision of public defender services. In addition, a recent study by the Bureau of Justice Statistics, United States Department of Justice, indicates a marked increase in contracting for criminal defense work.

Because competitive delivery of Federally funded legal aid grants is a new requirement for LSC the Corporation, in compliance with the Congressional imperative to install a system of competition after confirmation of a new Board, has begun the necessary research on this issue.

Q: I understand that last year you allocated $300,000 of carryover funds for purposes associated with timekeeping and functional accounting, but that this amount remained unspent at the end of fiscal year 1988. Is this the case? How does LSC intend to use this money?

Last year GAO recommended that before LSC proceeds with automating its case services reporting system and implementing timekeeping and functional accounting, it should analyze the costs and benefits and prepare a plan for an orderly design, development, and implementation process. Has your staff considered the recommendations of GAO? Is LSC taking action along these lines?

A: Legal Services Corporation President, Terry Wear, appointed a task force to develop a system of timekeeping that would help ensure the economic, effective delivery of legal assistance. The Task Force is using the GAO report and recommendations as the basis for its development work.

Regulation Affecting Alien Representation

Q: LSC recently advised us that it was publishing the LSC Alien Regulations on April 7 and that the rule would become effective 30 days after publication. If the Attorney General decides that legal services are not within the 5-year disqualification for amnesty aliens, will LSC withdraw the restriction on representation for those aliens?

A: The LSC Board made it clear when it adopted revisions to Part 1626 that, in the event the Attorney General reaches a conclusion inconsistent with this rule, the Board will revisit the matter. This intent was reaffirmed in the preamble to the final rule in the April 27, 1989 Federal Register publication.

Fee-Generating Regulation

Q: With respect to your proposed fee-generating regulations: What specific evidence do you have that programs were taking fee cases that would otherwise be taken by the private bar? Did any bar associations or private attorneys complain about the fee-generating case practices or recipients? Why should we create disincentives for recipients to take certain fee-generating cases, if they have followed all of the procedures for referral and the client cannot find adequate representation from the private bar?

A: The presence of conflict between bar associations or private attorneys and LSC recipient attorneys was not the motivating factor for revision to Part 1609 although some anecdotal complaints had arisen. Congress already decided when it included section 1007(b)(1) in the LSC Act that the Corporation should have broad authority to regulate fee-generating cases in order to prevent potential competition between private attorneys and legal services attorneys. This rule attempts to encourage cooperation between the bars and legal services programs by including an option for programs to enter into an agreement with local general membership bar associations as to which types or fee-generating cases would most likely not be of interest to the private attorneys in the recipient's service area. Although the American Bar Association opposes shifting resources among recipient programs in principle, nearly all of its specific objections to the proposed rule were addressed with revisions.

As for those cases where private counsel is not forthcoming, and the client meets all necessary eligibility and local priority criteria, the LSC recipient should provide representation and should be entitled to fees that may arise from such representation, subject to the limits contained in the revised fee generating regulation.

Alternative dispute resolution programs

Q: The Legal Services Corporation's FY90 budget request includes a new $745,000 line to stimulate innovation in the provision of legal services. The Subcommittee understands that about $500,000 of this will go towards alternative dispute resolution (ADR) pilot programs, which have proven to be an effective means of streamlining the justice system and relieving court backlogs.

It has come to the Subcommittee's attention that in at least one case involving a reputable ADR program, the Neighbor-to-Neighbor Justice Center in Savannah, Georgia, the Legal Services Corporation placed restrictions on the availability of these funds which may limit the program's effectiveness. In this case, Legal Services, after reviewing a grant application from this Savannah organization, published in the Federal Register its intent to award the grant. However, this grant application was ultimately refused on the grounds that the Neighbor-to-Neighbor Justice Center did not involve lawyers at each stage of each case resolved in its mediation process. Can you please explain the rationale for this decision in light of the goal of ADRs to provide low-cost, non-litigious mediation in order to reduce court loads and attorneys' fees?

A: The rationale for the decision is delineated in Appendix D, the December 2, 1987 opinion from Suzanne B. Glasow to Mary Higgins. Generally, the language and legislative history of the LSC Act makes it clear that, except for certain tribal funds, Congress intended to fund only those legal services provided by attorneys or work supervised by attorneys for which they have final responsibility, such as work done by paralegals.

Q: Have other ADR grant applications been turned down for similar reasons, and if so, which ones and when?

A: No requests for ADR grants have been denied by LSC for similar reasons. Any ADR grants given out by the Corporation have involved attorney oversight of legal assistance activities.

Q: Has this criteria for lawyers' involvement been included in your regulations following the usual rule-making procedure?

A: No ADR regulations have yet been promulgated by the Corporation. The December 2 opinion is an interpretation of activity allowable under the LSC Act. It does not create new law that requires a legislative rule promulgated pursuant to public notice and comment.

Q: Does the Legal Services Corporation intend to include similar restrictions on the availability of any funds that may be appropriated for ADR programs in FY90?

A: As pointed out in the attached opinion on ADRs, in order for LSC to fund ADR legal assistance by non-attorneys, Congress would have to amend the LSC Act or provide explicit authority in the LSC appropriations bill.

ATTACHMENT A

LEGAL SERVICES FOR THE POOR:

TIME FOR REFORM

Douglas J. Besharov
Resident Scholar

February 3, 1989

Declining Productivity?

Many legal services programs make efficient use of their funds.[40] "Innovation in legal services is not new," notes Jon Asher. "The Legal Aid Society of Metropolitan Denver has two decades of history of using paralegals, some technology, the involvement of private bar law school clinics, alternative dispute resolution mechanisms, and non-attorneys in our offices."

But many others operate little differently than law offices did twenty years ago. As a result, there are vast disparities in the efficiency of grantees. Van O'Steen summarized:

> In my experience, most legal services organizations and most private law firms delivering legal services to the middle-income and lower-middle-income consumer are woefully underautomated and improperly staffed. Automation and proper staffing are absolutely critical today to cost and quality effectiveness in the delivery of legal services.

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[40] For a discussion of the uneven program use of computerized information systems, see Kemp, J., Lauritsen, M., and Trautman, D., "Report to the Legal Services Corporation on the Conference on Automated Database Management At Harvard Law School, August 1988, and Recommendations for Action by the Corporation," (Unpublished report, September 15, 1988).

The question is: How many programs are being run efficiently--and how many are not?

The limited data available suggest that there are many in the latter category. Data collected by the Corporation on how field programs resolve cases suggest a substantial decline in productivity. As Figures 6A and 6B illustrate, across all categories of reason for case closure, the proportions are again almost exactly constant, except for cases closed by "settlement without litigation." Between 1980 and 1984, they fell by almost 42 percent.

Cases of settlement without litigation tend to be time-consuming--and do not present the attraction of litigation and a possible change in law. Hence, in a period of declining resources, one would expect attorneys to reduce the number of negotiated settlements that they handle. Such cases, after all, are basically service cases, which are of relatively lesser interest because they do not make new law. In contrast, one would predict that they would continue to pursue litigated cases, because they are more interesting, and have a greater potential impact.

Thus, at first glance, one might interpret the decline in negotiated settlements as a consequence of Reagan era budget cuts. The decline, however, begins before the cuts and held about the same even after funding rose. We fear that they signal a continuing decline in the productivity of legal services attorneys. If so, it could be quite large--perhaps as much as 20 percent.

Table 9: CLOSED CASES BY REASON FOR CLOSURE: 1980–1984[a]

Reason	1980	1981	1982	1983	1984
Advice					
(thousands)	367,168	399,477	412,114	445,997	414,442
(%)	32.1	32.1	35.9	35.0	33.8
Brief Service					
	155,735	193,117	189,873	233,392	228,709
	13.6	15.5	16.6	18.3	18.6
Referred After Legal Assessment					
	90,004	96,399	108,013	116,134	115,112
	7.9	7.7	9.4	9.1	9.4
Client Withdrew					
	126,756	134,212	101,829	115,747	113,799
	11.1	10.8	8.9	9.1	9.3
Court Decision					
	129,307	133,724	102,537	107,889	108,160
	11.3	10.7	8.9	8.5	8.8
Administrative Agency Decision					
	63,031	73,485	61,241	69,558	63,214
	5.5	5.9	5.3	5.5	5.1
Negotiated Settlement Without Litigation					
	83,838	74,218	54,747	55,156	48,693
	7.3	6.0	4.8	4.3	4.0
Negotiated Settlement With Litigation					
	45,409	48,814	36,474	37,769	38,922
	3.9	3.9	3.2	3.0	3.2
Insufficient Merit					
	33,765	35,941	29,090	34,895	32,392
	3.0	2.9	2.5	2.7	2.6
Change in Eligibility					
	8,648	9,008	6,414	6,750	6,850
	0.8	0.7	0.6	0.5	0.6
Other					
	40,398	46,831	44,889	51,031	57,065
	3.5	3.8	3.9	4.0	4.6
Total	1,144,059	1,245,226	1,147,221	1,274,318	1,227,358
	100	100	100	100	100

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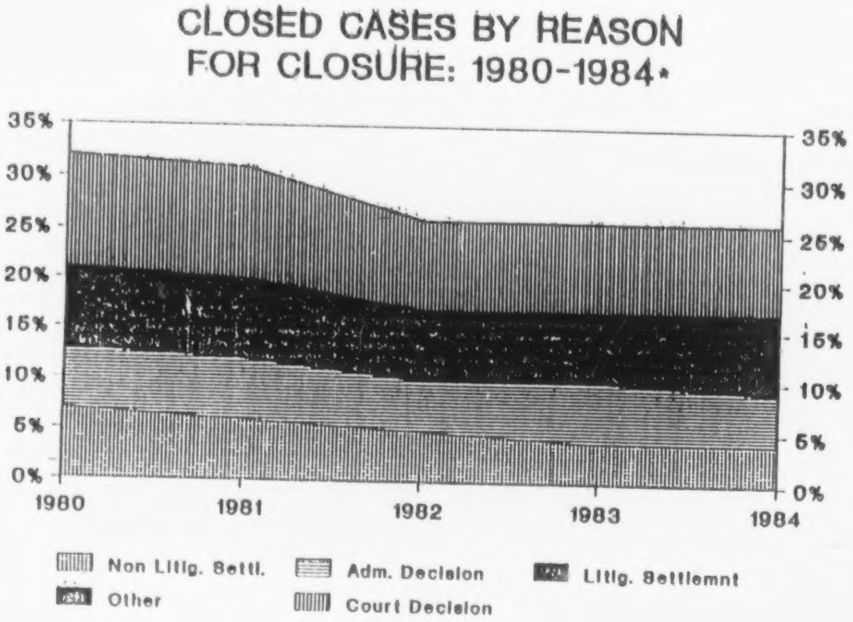
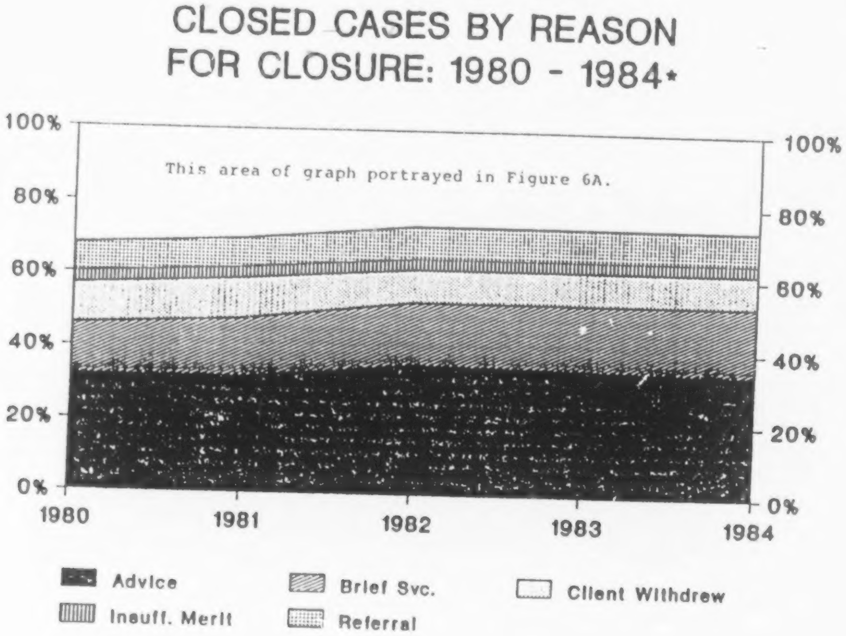
[a] Legal Services Corporation, Office of Information Management, 1984 Fact Book (May 1984), p. 13; and 1985 Field Program Data (No date), p. 44.



*LSC Field Services Data, Various Years

†NOTE: This graph portrays the upper area of Figure 6B.

Figure 6A



*LSC Field Services Data, Various Years

Grantees may be expending a great deal of their resources to no substantial effect, at least given the program's public image. Using the same data, we devised a rough method to estimate the degree of effort and resources expended in the various types of cases. Essentially, we classified cases into two basic types: "extensive" (presumably requiring considerable time and resources) and "non-extensive" (presumably requiring little time or few resources).[41] Using this method, we find that in 1984, 74 percent of local workloads involve work which we would label non-extensive[42] (See Table 9 and Figure 7). Figures 8-11 show vast disparities in reason for closure among types of cases.

If this very rough analysis is correct, then most LSC resources go to cases in which relatively little time is spent helping clients with serious problems. In other words, it appears that a great deal of time is spent in giving advice, perhaps, but, otherwise, in deciding not to serve potential clients. If so, this is a matter of potentially great programmatic and policy significance.

---

[41] Under "extensive" cases, we included those that were closed because a settlement was reached (with or without litigation) and because a decision was reached by a court or an administrative agency. To be sure that we did not understate the size of this group, we also included the category of "other." Under "non-extensive" cases, we included those that were closed by the attorney giving advice, brief service, or a referral; the client withdrawing or becoming ineligible; or if there was insufficient merit to proceed.

[42] Derived from Legal Services Corporation, 1985 Field Program data, p. 39.

We further estimate that the average "extensive" case takes about 2 1/2 days of staff time.[43] (Interview data tend to confirm this estimate.) Given the relatively routine character of the cases involved, it appears that many LSC attorneys lack the skills, experience, or supervision to handle cases as expeditiously as they should. There is also a high degree of turnover among staff, with many young lawyers fresh out of law school being asked to handle cases under the supervision of attorneys with only two or three more years of experience. We also note that the turmoil of recent years have taken their toll on staff quality and morale, which, in turn, is bound to have an effect on productivity.[44] The National Organization of Legal Services Programs explained the problem as follows:

> Years of stagnation and retrenchment have taken a severe toll on program staffs. Salaries of legal services lawyers are among the lowest in the legal profession and have fallen steadily out of proportion to salaries in both the public and private sectors. Training is an essential mechanism for assuring that advocates have the knowledge and skills they need to represent their

---

[43] Calculation assumes that each LSC field lawyer works 8 hours per day, 240 days a year, or 1,920 work hours per year. There are roughly 4,650 LSC field attorneys who work a total of 8,918,000 hours in a year. Assuming that each non-extensive case takes about 3 hours, LSC field lawyers spend about 2,733,912 hours on non-extensive cases and 6,184,088 hours on extensive cases, almost 20 hours per case. It is important to note that the 20-hour figure is probably too low because 3 hours per non-extensive case is a very high estimate, though it could offset the time LSC lawyers spend on non-case-related work, such as training, administration, planning, etc.

[44] See, e.g., Washington Council of Lawyers, "Report on the Status of Legal Services for the Poor," November 1983, at pp. iii and 19, et seq.

> clients effectively, but budget constraints have made it difficult to accommodate staff development needs. Several factors make it difficult to recruit highly qualified law school graduates who reflect the ethnic and gender diversity of low-income communities. The high cost of attending law school means that many recent graduates have significant debts and they simply cannot afford to work for a legal services entry-level salary. Few law schools offer curricula that challenge law students to consider poverty law as an area of specialization to practice. In recent years, there has been no national effort to coordinate recruitment of new attorneys for legal services programs.[45]

We must emphasize the sketchiness of the data upon which the foregoing conclusions are based. But they are the only systematic data available, and they lead us to fear that the lawyer-dominated system of legal services management, which may have worked when the program was suffused with young, idealistic lawyers, in now in disrepair. Conditions have changed. So should the program.

> Legal services programs must develop ways to improve their productivity, with particular attention to private attorney involvement in service delivery, and staffing issues such as specialization, compensation, recruitment, and training. An evaluation of productivity must assess

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[45] The National Organization of Legal Services Programs, "Future Challenges: A Planning Document for Legal Services" (Washington, D.C.: National Legal Aid and Defender Association and Project Advisory Group, 1988), republished in Clearinghouse Review (November, 1988), p. 639.

the full scope of client representation that legal services programs perform.[46]

RECOMMENDATION: The Corporation should initiate a study of the productivity of programs and individual attorneys to determine how it can be improved.

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[46] The National Organization of Legal Services Programs, "Future Challenges: A Planning Document for Legal Services" (Washington, D.C.: National Legal Aid and Defender Association and Project Advisory Group, 1988), republished in Clearinghouse Review (November, 1988), p. 640.

Table 10: ESTIMATED RESOURCE USE BY CASE TYPE: 1984[a]

LEGAL PROBLEM	EXTENSIVE	NON-EXTENSIVE	TOTAL
Family	104,110	254,742	358,852
(%)	29	71	-
Housing	45,261	188,918	234,179
	19	81	-
Income	76,332	146,845	223,177
Maintenance	34	66	-
Consumer/	28,590	124,612	153,202
Finance	19	81	-
Education	1,117	15,772	16,889
	7	93	-
Employment	6,731	31,107	37,838
	18	82	-
Juvenile	12,557	6,402	18,959
	66	34	-
Health	5,114	22,967	28,081
	18	82	-
Individual	6,979	21,677	28,656
Rights	24	76	-
Other	29,263	98,262	127,525
	23	77	-
Total	316,054	911,304	1,227,358
(%)	26	74	-

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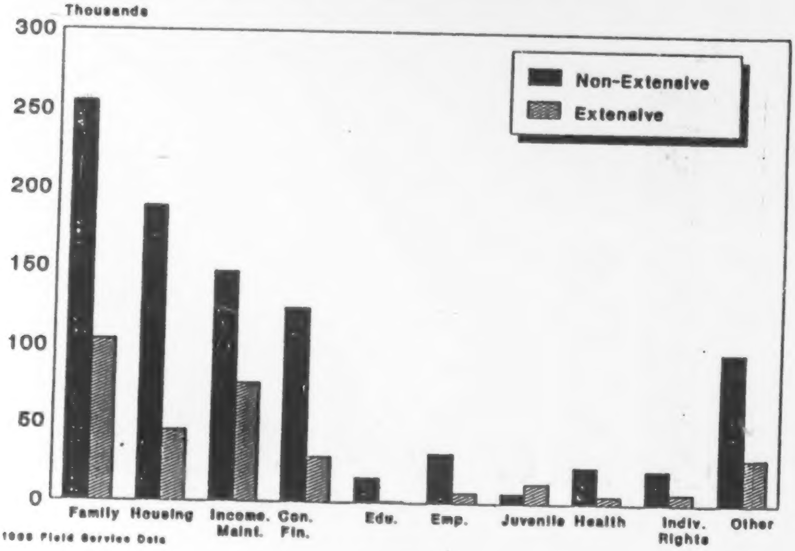
[a] Derived from Legal Services Corporation, Office of Information Management, 1985 Field Program Data. (No date), p. 44.

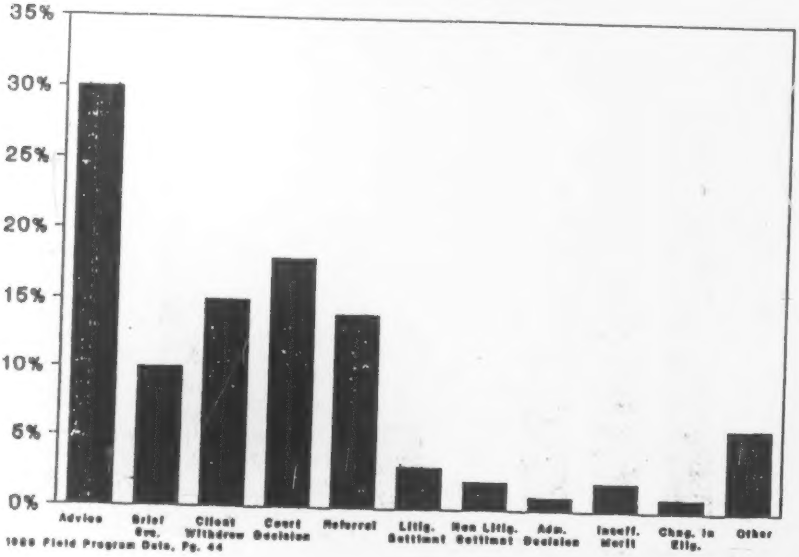
ESTIMATED RESOURCE USE
BY CASE TYPE: 1984*



*LSC 1986 Field Service Data

Figure 7

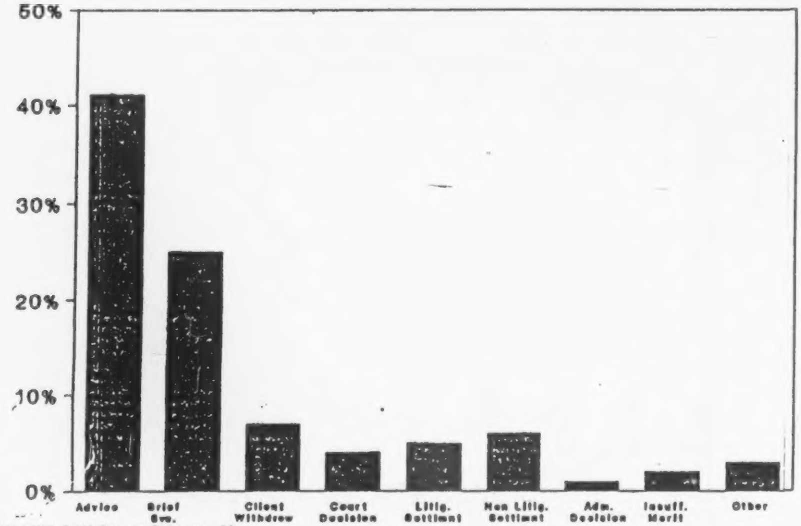
REASON FOR CLOSURE
FAMILY CASES: 1984*



*LSC 1986 Field Program Data, Pg. 44

Figure 8

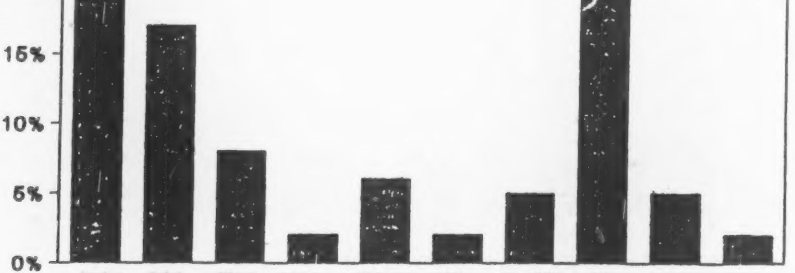
REASON FOR CLOSURE
HOUSING CASES: 1984*



*LSC 1986 Field Program Data, pg. 44

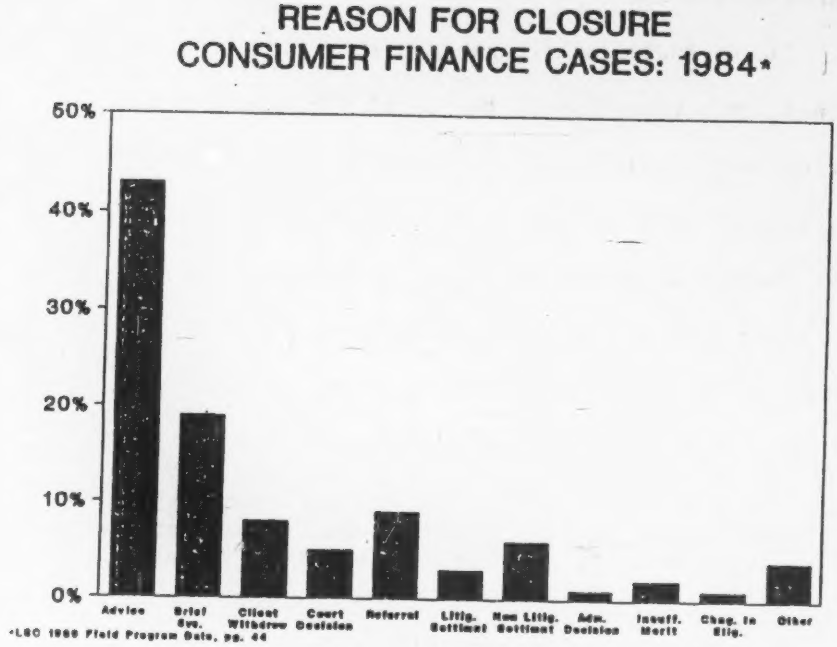
Figure 9

REASON FOR CLOSURE
INCOME MAINTENANCE CASES: 1984*



*LSC Field Program Data, pg. 44

Figure 10



*LSC 1985 Field Program Data, pg. 44

Figure 11

Program Monitoring

Unless individual grantees are to be allowed to operate on their own, unregulated, the Legal Services Corporation must conduct regular program monitoring. Public funds, after all, are involved and "no reasonable person would argue that there should not be monitoring," as John Tull said.

Monitoring can do more than ensure financial accountability and statutory compliance. It can raise quality. Robert Sable put it this way:

> To maintain efficiency and high-quality service, some regulation is necessary. Performance standards must be met. Recipients must be given incentives to do their jobs better; and they should be punished if they do not do them well. Take away their money or restrict their activities or something like that.

And yet, throughout its twenty-year life, the federal legal services program has done a shockingly poor job of monitoring grantee performance. The point is sufficiently important to quote, at length, John Hansen's description of the lack of adequate program monitoring since 1967:

> The 1967 amendments to the Economic Opportunity Act of 1974 required GAO to review programs authorized by the Act, including the Legal Services Program. Our August 1969 report on the effectiveness and administration of the Legal Services Program included an evaluation of the Office of Economic Opportunity's management information and reporting system.
>
> This system was intended to provide a basis for evaluating the effectiveness of individual legal services programs and for comparing programs to make decisions on future funding or program improvements. We found that the system did not provide the data necessary to monitor program performance and that over 40 percent of the programs were not complying with the system's data requirements.
>
> GAO recommended that the system be improved so that program activities could be monitored and that programs be required to comply with the system's requirements.

A national CPA firm, which had been hired by OEO to study the Legal Services Program, concurred with these findings. It said the information system did not provide management with the data needed to make decisions or provide a basis for comparing one program with another.

In March 1973, we again reported that the management information system was not providing the data necessary to measure program performance, such as the number and types of cases being handled or the cost of handling these cases. We also found that legal services programs were continuing to ignore requirements to submit the necessary information reports. We therefore reiterated our 1969 recommendations.

The advent of the Legal Services Corporation in 1974, brought large increases in funding to the delivery of legal assistance to the poor but no resolution to the problem of evaluating program performance. In April 1978, GAO reported that LSC had still not established a reliable information system for evaluating the performance of legal services programs.

We found that substantial differences existed in how the programs defined a case and that the programs did not generally maintain records to show how attorneys spent their time. Programs continued to resist efforts to establish a management information system and timekeeping requirements, because of concerns about how LSC would use the information to assess program performance. We recommended that LSC place top priority on the development of a management information system that would provide meaningful information to evaluate program performance.

In March 1979, the House Appropriations survey and investigation staff also reported that LSC lacked an adequate management information system to ensure the quality of program performance, or to make important management decisions on the allocation of funding. They noted that the establishment of a management information system to collect standardized comparable data for program evaluation was an unfulfilled goal of the delivery systems study mandated by the LSC Act. The report also stated that LSC efforts to establish an effective information system had been thwarted by tremendous resistance from programs which were opposed to keeping detailed records on how much time attorneys spent on cases.

The preparation of this report was repeatedly stymied by the absence of relevant and reliable data about grantee operations. Its authors can understand Michael Costers' candid expression of frustration:

My initial exposure to legal services to the poor was as a monitor for several years. I recall the phrase "I don't know" echoing during many monitorings and preparation meetings, as it now echoes in many board meetings. It comes from staffers, from Board members, from officers of the Legal Services Corporation, from program representatives employed either by the program or by representative groups such as the Project Advisory Group.

RECOMMENDATION: The Legal Services Corporation should regularly collect sufficient information to understand grantee caseloads, clients and operations.

Many grantees have successfully opposed the Corporation's efforts to improve the quality and usefulness of the data it collects, perhaps fearful that it will be embarrassing or misused. But it is a mistake to oppose a reasonable expansion of data collection. If the legal services program is to become more responsive and effective, policy makers need much better information about what is going on--who is being served (and who is not), which legal problems are being handled (and which are not) and how they are being handled.

As a first priority, the Corporation should upgrade its data processing capacity. The Office of Information Management seems unable to process the caseload and client data provided by grantees in a timely manner. As of 1989, program data for 1985 and 1987 were available only in preliminary draft form; data for 1986 were not available at all.

More extensive data is also necessary. For instance, we know very little about the legal services clients themselves;

we only have data on client ethnicity[47] and age.[48] Clearly this is not enough.

One would at least expect a means-tested program to collect income data on its clients. The Corporation does not collect such data. It should. It should also collect data on other client characteristics such as gender, marital status, educational attainment, work status, and--certainly--whether the client is receiving public assistance. In addition, because of the importance of family cases, information about the gender of clients would shed important light on caseload statistics.

The bulk of data collected by the Corporation concerns grantee caseloads: the types of cases closed and the reasons for closing them. (A copy of the current Case Service reporting form, "CSR," is reproduced on pages 69-70.) On the surface, these data appear to indicate the direction and priorities of local programs; we know, for example, that the largest number of cases concerns family matters. However, as we have seen, the usefulness of this caseload data is actually quite limited.

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[47] Clients are categorized into one of six ethnic groups--white, black, hispanic, native american, asian/pacific islander, and unknown.

[48] LSC currently uses three classifications for age: under 18, 18-59, and 60 and over. To increase the usefulness of this data, LSC should present age data with narrower ranges. One possibility: under 18, 18-29, 30-39, and 40-59.

ATTACHMENT B

LETTER FROM LEGAL AID FOUNDATION OF LONG BEACH

May 5, 1989

Anthony Gomes, Manager
Monitoring Division
Legal Services Corporation
400 Virginia Ave., S.W.
Washington, D.C. 20024-2751

Re: Draft Monitoring Report for Grantee #805070

Dear Mr. Gomes:

In response to your invitation, the Legal Aid Foundation of Long Beach submits the enclosed response to the draft monitoring report received on April 10, 1989.

The response being submitted by the Foundation addresses the factual findings and conclusions of the draft report as it reflects the program's operations at the time of the visit in October, 1988. Many of the recommendations made in the report have been carried out since the visit but prior to the receipt of the draft report. The response does not address those issues. They either have been dealt with in the Application for Funding or they will be addressed in an appropriate forum in the future.

Thank for your opportunity to clarify the misunderstandings and misconceptions about our program reflected in the draft report. We trust that these matters will be cleared up in the final report, and look forward to receiving it promptly.

Sincerely,

Nancy M. Salzman
President

Toby J. Rothschild
Executive Director

LETTER FROM LEGAL SERVICES OF NORTHERN VIRGINIA, INC.

May 2, 1989

Anthony Gomes
Manager of Monitoring Division
Legal Services Corporation
400 Virginia Avenue, S.W.
Washington, D.C. 20024-2751

Dear Mr. Gomes:

We received the draft monitoring report in March for the LSC monitoring visit to our program which occurred last summer. Pursuant to my conversation with your office late in March and my conversation with Mr. McDonald yesterday, I have only a few comments to make in response to that draft report.

In years past, for the sake of accuracy and fairness, I felt compelled to write rather lengthy responses to the draft monitoring reports we received. With this most recent report, however, I do not feel that a similar lengthy response my me is necessary. In fact, I believe LSC assembled and assigned a very competent and highly professional team to visit us and their resultant report, even with its criticisms of our program, is a well written document which should and will merit our attention in terms of its recommendations and findings which address program operational areas which could be enhanced or need corrective actions.

Sincerely,

Charles E.K. Vasaly
Executive Director

LETTER FROM SOUTHEASTERN MASSACHUSETTS LEGAL ASSISTANCE CORPORATION

[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Re: Reply to Draft Monitoring Report From Grantee #122110

Dear Mr. Gomes:

Please find enclosed SMLAC's reply to the draft monitoring report prepared pursuant to the visit of an LSC monitoring team in November of 1988.

We found the team to be professional and courteous. Many suggestions were well taken and, as you will see, many were implemented immediately and others are in the process of implementation. We expect to address each of the recommendations more fully after receipt of the final report.

Please let me know if I can provide further information or clarification of the matters discussed in this reply.

Sincerely,

Michael E. Alexander
Executive Director

LETTER FROM LEGAL AID SOCIETY OF ALAMEDA COUNTY

April 5, 1989

Anthony Gomes, Manager
Monitoring Division
Legal Services Corporation
400-Virginia Ave. S.W.
Washington, D.C. 20024-2751

Draft Monitoring Report
Grantee # 805160

Dear Mr. Gomes:

This letter is in response to your March 14, 1989, letter and Draft Monitoring Report. The Legal Aid Society of Alameda County is pleased by the very positive monitor report.

We are attempting to institute all of the recommendations set out in the report.

Very truly yours,

Clifford Sweet

CLIFFORD SWEET
Attorney at Law

LETTER FROM MERRICMACK VALLEY LEGAL SERVICES, INC.

February 25, 1988

Anthony Gomes, Manager
Monitoring Division
Legal Services Corporation
400 Virginia Avenue, S.W.
Washington, D. C. 20024-2751

Re: Comments - Draft Monitoring Report for
Grantee #122090

Dear Mr. Gomes:

Enclosed please find our program's comments regarding the abovementioned Draft Monitoring Report. Thank you for the opportunity to comment thereon.

There are several comments which specifically refer to obvious mistakes in transcription. The balance of the comments however, I believe, reflect corrections which are important to us if an accurate picture of our program is to be set forth. I recognize that the suggestions and recommendations in the draft are well thought out, and as they are contained in the final report, will be the basis for changes and adjustments in the program.

I respectfully hope that our information will be utilized by your office in the final version of this report.

Very truly yours,

Thomas R. Barbieri,
Executive Director

ATTACHMENT C

Following is a list of services provided by Westlaw to Legal Services Corporation grantees.

GENERAL FEDERAL DATABASES

- Combined Federal Cases including:
  - U.S. Supreme Court
  - Court of Appeals
  - U.S. Court of Customs and Patent Appeals
  - U.S. Court of Claims
  - Temporary Emergency Court of Appeals
  - District Courts
  - U.S. Bankruptcy Courts
  - U.S. Circuit Courts
  - U.S. Court of International Trade
  - Unreported District Court Cases
- Statutes:
  - U.S. Code

Administrative Materials:
- Code of Federal Regulations
- Federal Register
- Presidential Documents
- Comptroller General Decisions
- U.S. Attorney General Opinions

FEDERAL TOPICAL DATABASES

- Administrative Law
- Admiralty
- Antitrust and Business Regulation
- Bureau of National Affairs
    - Antitrust and Business
    - Antitrust and Trade Regulation Report
    - Banking Report
    - Daily Report for Executives
    - Securities Regulation and Law Report
- Bankruptcy
- Communications
- Constitution (First Amendment)
- Copyright and Patent
- Criminal Justice
- Energy and Utilities
- Environmental Law
- Financial Services
- Government Contracts
- Government Operations
- International Trade Commission and Court of Justice
- Jurisprudence and Constitutional Law
- Labor
- Legal Services
- Litigation
- National Defense
- Securities
- Tax (Laws, Decisions, Publications)
- Tort Law
- Transportation

STATE DATABASES

Provides coverage of the following topics for the states and the District of Columbia for:

- Supreme Court
- Court of Appeals
- Court of Civil Appeals
- Court of Criminal Appeals
- Attorney General Opinions
- Various tax, corporate, and insurance statutes

MULTISTATE TOPICAL DATABASES

- Administrative Law
- Antitrust and Business Regulation
- Corporations
- Criminal Justice
- Education
- Energy and Utilities
- Family Law
- Financial Services
- Government Contracts
- Insurance
- Jurisprudence & Constitutional Theory
- Legal Services
- Litigation
- Property

- Securities
- Taxation
- Tort Law
- Utility Regulation

REGIONAL REPORTER DATABASES

- Atlantic
- Northeastern
- Northwestern
- Pacific
- Southeastern
- Southern
- Southwestern

LAW REVIEWS

Selected articles from over 200 law reviews and bar journals.

OTHER PUBLISHER'S DATABASES

- American Bar Association Summaries
- American Bar Association Materials
- American Bar Association Legal Education Overview
- Billcast - Center for Public Choice congressional votes
- Bureau of National Affairs Publications
  - Antitrust and Trade Regulation Report
  - Banking Report
  - Chemical Regulation Reporter
  - Daily Report for Executives
  - Daily Labor Report
  - Daily Tax Report
  - International Trade Reporter
  - Pension Reporter
  - Pensions and Benefits Reporter
  - Patent, Trademark, and Copyright Journal
  - Securities Law Daily
  - U.S. Law Week Daily
- CCH (Commerce Clearinghouse) Blue Sky Law Reporter
  - State Statutes and Regulations
  - Uniform Securities Act
  - Federal and State Court Decisions
  - Administrative Agencies Decisions
  - Attorneys General Decisions
  - State Guides and General Guides
  - Finding lists and Forms lists
  - Policy Statements
  - Report letters
  - Index
- CCH (Commerce Clearinghouse) Tax Day:Federal & State
- DIALOG - Business, medical, social & science information
- Directory of Online Databases
- Dow Jones News/Retrieval
- Expertnet - Malpractice and injury expert witnesses
- Forensic Services Directory
- Index to Legal Periodicals
- Legal Resource Index
- Public Utilities Reports
- Tax Notes International
- Tax Notes Highlights
- Tax Notes Today
- Tax Notes
- PHINET - Prentice Hall federal tax materials
- VU/TEXT - Full text of over 30 major newspapers

CITATORS

Insta-Cite
Shepard's Citations

WESTLAW ONLINE SUPPORT INFORMATION

Black's Law Directory
WESTLAW Case Highlights
WESTLAW Topical Highlights, Products Liability
WESTLAW Training
Shepard's Training
Terminal Training
Practice Databases
Database Identifier

ATTACHMENT D

MEMORANDUM

To: Mary Higgins
Director, Office of Field Services

From: Suzanne B. Glasow
Assistant General Counsel

Date: December 2, 1987

Re: Neighbor to Neighbor Justice Center's Proposed Grant: Is Mediation "Legal Assistance?"

Issue: The Neighbor to Neighbor Justice Center, Inc. (NNJC) has requested a grant from the Legal Services Corporation (LSC) for the provision of mediation services by non-lawyers. As you are aware, the President of the Minnesota State Bar Association has challenged the proposed grant partly on the grounds that mediation is not a form of legal assistance and the Corporation is only authorized to fund programs furnishing "legal assistance" to eligible clients.

Summary: The Legal Services Corporation ("LSC") is authorized to fund legal assistance activities which consist of either the direct provision of legal assistance or activities that are necessary for or support the provision of legal assistance. A review of both the language and legislative history of the LSC Act makes it clear that Congress intended to fund only those legal services provided by attorneys and those activities that support attorney provided legal services.

Non-lawyer mediators may not engage in the type of legal assistance contemplated in the LSC Act without violating state statutes against the unauthorized practice of law. Because LSC has no authority to fund activities outside the Act's definition of legal assistance, it should not provide funds to an organization for mediation services provided by non-lawyers.

The Meaning of "legal assistance" in the LSC Act.

LSC is authorized to fund organizations that provide "legal assistance" to eligible clients or that provide services necessary for the provision of legal services. 42 U.S.C.

section 2996e, 1006(a)(1)(A) and (B). In addition, LSC may fund three activities--training, research, and the provision of a clearinghouse of information--that are related to the delivery of legal assistance. 42 U.S.C. section 2996e, 1006(a)(3). In other words, LSC is authorized to fund legal assistance activities which consist of either the direct provision of legal assistance or activities that are necessary for or support the provision of legal assistance. Whether or not LSC may fund the provision of mediation services by non-lawyers depends on whether such services fit within the LSC Act's definition of "legal assistance." A review of both the language and legislative history of the LSC Act makes it clear that Congress intended to fund only (1) legal services provided by attorneys, and (2) those activities necessary to support attorney provided legal services.

First, the LSC Act defines "legal assistance" as "the provision of any legal services consistent with the purposes and provisions of this title." 42 U.S.C. section 2996a, 1002(5). Defining "legal assistance" as "legal services" is not especially enlightening except for the consistent use of the word "legal", which indicates that the services are to be performed by attorneys, since non-lawyers are prohibited by law from providing legal assistance to others. The Senate Report on the 1974 Act further clarifies that the legal services contemplated in the Act are to be provided by attorneys. It provides that:

> Legal assistance is specifically defined as "legal advice and representation and other appropriate legal services," which include the full range and kind of professional services provided by attorneys as attorneys in non-criminal proceedings or matters to and on behalf of their clients, as well as the kind of assistance in education relating to legal rights and responsibilities which lawyers are ordinarily called upon to provide. These services have traditionally been provided to eligible clients by legal services programs.

S. Rep. 495, 93d Cong; 1st Sess., 9 (1973) (emphasis added).

Second, section 1001 of the LSC Act provides that the purpose of the Act is "to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel" because the provision of access to "adequate legal counsel will serve best the ends of justice". 42 U.S.C. section 2996, 1001(2) and (3). The use of the term "legal counsel" indicates that the intent of the Act is to provide the poor, who would otherwise be unable to afford such assistance, with the legal services of attorneys.

Third, section 1006(a)(1)(A)(i) provides for the Corporation to enter into a grant or contract with "individuals, partnerships, firms, corporations, and nonprofit organizations." 42 U.S.C. section 2996e. The legislative history of this section makes it clear that the terms in this provision refer "to entities of attorneys authorized to practice law in the state in question." S. Rep. 84, 93d Cong., 2d Sess. 19 (1974).

Fourth, section 1007(g) of the LSC Act provides for the Corporation to conduct studies of alternative methods for the provision of legal services. However, this section contemplates alternatives to the staff-attorney program, not alternatives to the provision of legal services by attorneys. This is indicated [illegible] by the suggested alternatives such as judicare, vouchers, prepaid legal insurance and contracts with law firms, all of which involve the provision of legal services by attorneys; and second, by the provision's legislative history which indicates that Congress intended to encourage study of alternative methods of delivery or financing of legal services so that clients might have the freedom to select the attorney of his/her choice. See 119 CONG. REC. S 22709 (daily ed. December 12, 1973). No mention is made of consideration of alternatives to attorney provided legal services. See also H.R. Rep. 247, 93d Cong., 1st Sess. 21 (1973); S. Rep. 495, 93d Cong. 1st Sess. 18 (1973); S. Conf. Rep. 84, 93d Cong. 2d Sess. 29 (1974); 119 CONG. REC. H 5086, 5090, 5093 (daily ed. June 21, 1973); S22404, 22412 (daily ed. December 10, 1973), S22706 (daily ed. December 12, 1973); 120 CONG. REC. S12931 (daily ed. July 18, 1974).

Finally, section 1007(h) requires the Corporation to conduct a study on whether eligible clients who are veterans, native Americans, migrants or seasonal farm workers, persons with limited English-speaking abilities, and people with geographical impediments to legal service have special problems of access to legal services. Although the legislative history of this provision includes a recommendation that model projects might use mobile teams of attorneys, paralegals and trained counselors to provide assistance in the various residential, work, and community settings, there is no indication that the paralegals and trained counselors are meant to do more than assist attorneys in the provision of legal assistance.[1/] S. Rep. 472, 95th Cong., 1st Sess. 19 (1977); 123 CONG. REC. S16802 (daily ed. October 10, 1977).

Mediation by Non-Lawyers Is Not Legal Assistance.

It is not surprising that Congress did not consider the use of alternative methods of dispute resolution when it first enacted and later amended the LSC Act in 1974 and 1977 respectively. Various forms of alternative dispute resolution (ADR) have only become fashionable in the last few years. Developments in "Alternative" Dispute Resolution: An Overview, 115 F.R.D. 349, 362 (1986). Mediation, an increasingly popular type of ADR, is a process where the parties in a dispute discuss and negotiate an agreement with the aid of a mediator who remains neutral, acting only as a facilitator to the negotiations. Unlike an arbitrator, a mediator "has no authority to impose a settlement on the parties." Note, The Sultans of SWAP: Defining the Duties and Liabilities of American Mediators, 99 Harv. L. Rev. 1876, 1882 (1986).

Certain types of disputes such as domestic relations and divorce are well suited for the mediation process. However, as mediation's popularity has grown, problems have arisen. Issues as to who is qualified to mediate and what guidelines should be

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[1/] The use of paralegals for the performance of simple legal tasks has been sanctioned by the bar as long as the lawyer maintains a direct relationship with his client, supervises the work and has final responsibility for the work performed. See ABA Comm. on Prof. Resp., Opinion No. 316 (Jan. 18, 1967).

followed are unsettled and controversial.[2] Moreover, lawyers[3] and non-lawyers, in their role as mediators, must be cautious to avoid conflicts within their professions and with the law itself. The foremost danger that the non-lawyer mediator faces is being charged with the unauthorized practice of law. To avoid such a charge, the non-lawyer must not offer any legal advice or services to the parties involved in the mediation. Silberman, supra note 3, at 123.[4]

This means, of course, that the non-lawyer mediator may not provide the type of legal services contemplated in the LSC Act without violating state statutes against the unauthorized practice of law. This does not mean that it is not good policy to fund such activities. Problems with overloaded courts and litigation expenses have contributed to the current wave of enthusiasm for ADRs. However, before LSC may fund such activities, Congress would have to amend the LSC Act or provide explicit authority in the LSC appropriations bill.

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[2] The American Bar Association Task Force on Mediation has published standards for mediation in the areas of divorce and other family issues. The preamble and standards were adopted by the ABA's House of Delegates in August 1984, but the commentary should not be considered to be the position of the ABA. See Divorce and Family Mediation: Standards of Practice, Task Force on Mediation, Section of Family Law, American Bar Association (1986). See also Loeb, Introduction to the Standards of Practice for Family Mediators, 17 Family L.Q. 451 (1984).

[3] This memorandum does not reach the issue of whether LSC may fund a recipient that uses lawyers as mediators. However, problems arise here too in that lawyers must be careful in avoiding conflicts with the Code of Professional Responsibility. For instance, lawyers should be aware of possible violations of Canon Five of the Code of Professional Responsibility which provides that a lawyer must exercise independent professional judgment on behalf of a client. Some bar associations have ruled that an attorney mediator cannot overcome the burden of Canon Five because the role of a mediator is to aid both parties equally. Silberman, Professional Responsibility Problems of Divorce Mediation, 16 Family L.Q. 107 (1982).

On the other hand, Ethical Consideration 5-20 is used by some bar associations as a guide in defining the proper limits of the lawyer mediator's role. EC 5-20 provides that full disclosure to both parties is mandatory in the mediation process and further representation of either party in any resulting dispute is prohibited. The Boston Bar Association Ethics Committee has approved lawyer-mediation under some circumstances using the guidelines of EC 5-20. Silberman, supra note 3, at 111-12.

[4] Most State Bar Associations have a Standing Committee on the Unauthorized Practice of Law. Id. at 123 n. 57.

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Mr. Smegal:

You have told us Mr. Smegal, that you "have found the experience of serving on this Board extremely frustrating." I am aware that President Bush has the opportunity to replace all eleven members with nominees of his choice. Given your experience as a Reagan appointee and a member of the Republican party, if you were in the enviable position of advising the Administration on qualifications of nominees to the LSC Board, what would your counsel be?

I would urge the President to be guided in his selections by the criteria recently adopted without dissent by the American Bar Association's House of Delegates. These criteria provide that nominees be free of all conflict with the existence and function of the Corporation or the representation of poor people, that they demonstrate a commitment to the continued existence and effective operation of the Legal Services Corporation, that they be committed to keeping the Corporation and its grantees free from political control, that they understand and are fully committed to the role of legal services attorneys, and that the new Board be adequately representative of the organized bar, legal education, legal services attorneys, clients and organizations involved in the development of legal assistance to the poor. I would ask that the President move quickly to nominate eleven individuals who meet these criteria so that the vital mission of the Legal Services Corporation to provide equal access to justice for America's poor can once again proceed.

Mr. Raven:

In its FY 1990 Budget request, the Corporation has cited the growth in state and local resources for legal services, especially interest on lawyer trust account (IOLTA) funds, as a reason to reduce the LSC appropriation. I understand the ABA instead supports a substantial increase in LSC funding.

- Do you believe the availability of other resources should be a factor in determining the LSC level of funding?

There is no evidence that there exist new sources of revenue for legal services programs which would justify a reduction in funding; to the contrary, it is clear that the total resources available for legal services nationally are well below their 1981 levels. The pro bono contributions, IOLTA funds and other sources of supplemental support for legal services programs which have been generated since 1981 have not made up for the decline in federal funding during this period, let alone the huge unmet legal needs which existed then and now. We may hope that at some time in the future, total resources will be sufficient to reasonably meet the legal needs of the poor; if and when this occurs, it would clearly be appropriate to consider the availability of other resources in determining the level of federal support. But we are so far away from that state of affairs that suggestions of reducing federal support are totally without foundation.

I understand the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) has taken a continuing interest in the Corporation's initiatives with respect to support services.

- Do you, or does the ABA have an opinion on LSC's current proposal to eliminate funding for support programs and services?

we will not be creating the kind of semiconductor technology that the 21st century's technology will be based on—in defense, in medicine, in communications, in entertainment, in information, and so forth.

This is your last visit here, and I, too, have enjoyed having you appear before the subcommittee. I hope that the career people will continue to follow this very closely because it is, I think, the single most important trade issue that this country faces right now, and if we don't do the right things, I think we will live to regret it.

Senator HOLLINGS. We have had three hearings on it, and we are having more. We have had the best in the electronics industry, including IBM. Secretary Mosbacher, has been up too. We will continue to try to listen and learn informally and be in lockstep with the FCC and the Department of Commerce and our trade representative. But it is going to take an effort. Somebody is going to call it a policy. If you don't have a policy, that is the policy in itself, a nonpolicy. You all seem to like it.

Senator RUDMAN. No.

Senator HOLLINGS. Any other questions?

Senator RUDMAN. I don't. I wish Mr. Patrick well.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We have some additional questions for the record, Mr. Patrick. We appreciate it very much.

Mr. PATRICK. Thank you, Mr. Chairman.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

SPECTRUM AUCTIONS

Question: Mr. Chairman, you and the Administration have proposed to auction off 6 megahertz of unallocated spectrum to help raise money for the U.S. Treasury. Can your tell me how the small entrepreneur would be able to participate in an auction where the license would be issued to the highest bidder?

Answer: Auctions would have little effect on the ability of small companies to compete against large companies for scarce spectrum. Auctions would not change the scarcity of the spectrum or the price at which licenses trade. Since small businesses are able to bid successfully for licenses in the private auctions that occur in the aftermarket, they would be able to do so in an initial auction conducted by the FCC.

Both experience and economic principles support this view. Investors, whether large or small, will attempt to invest their money where the expected returns are highest. When a resource is sold, whether at an initial auction or a subsequent resale, the price paid will be a reflection of what the purchaser thinks he can earn, and the highest earnings will go to those who use it most productively. Those are the people who will pay the highest prices. Others, including many with deeper pockets, will choose to spend their money elsewhere, where they can use it more productively. Oil companies can pay top dollar for oil leases because only they can exploit them effectively. IBM certainly has the cash to be an effective bidder, but chooses to use its money in what are, for it, wiser ways. Similarly, it will be those firms that can best use spectrum, not those with the deepest pockets, that will choose to pay top dollar to acquire spectrum licenses. And a process that gets these licenses into the hands of those that can use them most effectively is operating as it should.

Question: You have estimated that the spectrum auction proposal would raise about $3.4 billion over two years. Yet the Congressional Budget Office estimates that such an auction would raise about $500 million. Do you think the CBO's estimate of the value of this spectrum is unreasonable?

Answer: The CBO and FCC estimates of auction revenues are each reasonable under its own assumptions. The assumptions differ in two major respects. First, the FCC assumed that all six megahertz of the remaining unassigned UHF spectrum would be available for auction, while CBO assumed that only four megahertz would be available. We know of no technical, economic, or legal barriers to awarding all six megahertz by competitive bidding, if permissive legislation were enacted.

Second, the FCC assumed that the spectrum will be awarded in nationwide blocks, while the CBO assumes that licenses will be awarded on a local basis. We believe that the spectrum would be worth considerably more under our assumptions, and should be awarded on that basis. With nationwide assignments, a single licensee could provide a service that a subscriber could use anywhere in the country. There would be no need for numerous licensees to coordinate technical standards and financial arrangements to assure that the service could be used throughout the country. CBO agrees with this assessment. The CBO 1989 Annual Report, Reducing the Deficit: Spending and Revenue Options (Feb. 1989, p. 226) states that if licenses "were auctioned on a national basis (that is, if a block of the spectrum was allocated to one successful bidder), the potential savings to the federal government could be much greater." Indeed, a CBO staff memo to the Budget Committee says that the FCC's estimate is in the zone of reasonableness.

BRITISH TELECOM-McCAW AGREEMENT

Question: The Commission recently approved McCaw Cellular Corporation's application to sell 23% of its stock to British Telecom. Included in the sales agreement was a provision that bound McCaw not to compete with British Telecom in other markets. Why did the FCC approve this "non-compete" clause? What effect will this provision have on U. S. trade policy?

Answer: On April 4, 1989, the Chief, Common Carrier Bureau, permitted the acquisition of approximately 22% of the common stock of McCaw Cellular Communications Inc. by British Telecom USA and the restructuring of various aspects of McCaw's stock. The Bureau concluded that neither the Communications Act nor the Commission's rules required the parties to seek Commission approval of British Telecom USA's investment in McCaw. No appeal of that decision was filed and the order is now final. McCaw is a domestic corporation which owns subsidiaries which in turn hold interests in cellular, paging and other radio authorizations. British Telecom USA is a Delaware corporation wholly owned by British Telecom. British Telecom, the principal provider of domestic and international telecommunications services and equipment in the United Kingdom, is a publicly held corporation established under the laws of the United Kingdom.

The purchase agreement entered into between British Telecom USA and McCaw provided that McCaw would sell 37 million shares of newly issued McCaw stock to British Telecom USA. The Bureau noted that the purchase was within the foreign ownership limitations contained in Section 310 (b)(4) of the Communications Act and that the transaction would produce benefits in the domestic telecommunications industry. Among the many aspects of the transaction, the purchase agreement also afforded British Telecom USA certain approval rights to safeguard its investment in McCaw. For instance, British Telecom USA must give its prior consent before McCaw can engage in certain specified actions, most of which are not relevant to the question posed. One of these restrictions precluded McCaw from entry into the United Kingdom market in competition with British Telecom.

The Common Carrier Bureau reviewed this clause, which provides that McCaw may not compete with British Telecom in the United Kingdom market without British Telecom USA's permission. The Bureau noted that this provision is not a typical covenant not to compete. Usually such prohibitions are absolute. Generally, the Commission will approve a covenant not to compete only if it is reasonable and is limited in geographic effect and duration. The Bureau stated that it was clear that this non-competition clause will have no impact in the United States domestic market. The effects this provision may have internationally are questionable given that the clause only applies to one U. S. firm and is not in and of itself an absolute bar to McCaw participating in the United Kingdom market. McCaw and British Telecom USA pointed out that the United Kingdom does not generally restrict foreign ownership in telecommunications licensees (including British Telecom) and that United States companies are active participants in the British telecommunications marketplace today. In addition, the Bureau held that although it would have some concern were such a noncompetition covenant entered into between domestic service providers, the Bureau believed this provision to be so minor in the overall context of the British Telecom USA/McCaw transaction that it was insufficient to justify further action.

The Bureau also examined the transaction under the antitrust component of the public interest standard contained in the Communications Act. The Bureau concluded that the overall public interest benefits from the British

Telecom USA/McCaw venture outweigh any possible anticompetitive effects from it - even assuming that these effects could be established. The sharing of British Telecom USA's technical and commercial expertise with McCaw will be beneficial for the domestic telecommunications industry. The Bureau additionally found that the British Telecom USA investment will strengthen the financial resources of McCaw which will support deployment, enhancement and expansion of cellular services to the public. Moreover, McCaw will benefit from British Telecom USA's substantial experience, expertise and knowledge gained from British Telecom's participation in the cellular marketplace. In addition, the public will benefit by enhanced competition in domestic services markets. In the cellular services there will continue to be two providers in each market; including the presence of strong nonwireline carriers, such as McCaw, to compete with wireline carriers. In the public land mobile services there are other carriers besides McCaw providing paging and two way communications services. Therefore, the Bureau found that the public interest would be served by the McCaw/British Telecom USA transaction.

Question: Did the FCC consult with the US Trade Representative's office before approving this provision?

Answer: Before reaching a conclusion concerning the proposed transaction the Commission made the filing available for public comment and inspection for 30 days. Federal and state agencies often participate in Commission proceedings which raise issues effecting those agencies' sphere of responsibilities. No comment was received from the executive branch, including the U.S. Trade Representative's Office. Of course, the impact of this transaction in the domestic market was carefully reviewed and approved.

PRICE CAPS

Question: The FCC has decided to implement a price cap plan for AT&T on July 1 of this year and for the local exchange companies at a later date. When are you planning to implement price caps for the local telephone companies?

Answer: In an Order adopted on March 16, 1989, and released on April 17, 1989, the Commission proposed a plan and schedule for implementing price cap regulation for local telephone companies. The Order states: "Although it may be possible to implement the proposed plan as early as January 1, 1990, it is more likely that implementation would occur in conjunction with the (local telephone companies') next annual access tariff revisions, which currently are scheduled to be filed on March 30, 1990, to be effective July 1, 1990."

Question: You have proposed to apply the same productivity factor of 3% to the local telephone companies as to AT&T. AT&T has faced some competition for several years and has been attempting to become more productive. The local telephone companies, on the other hand, face little competition and little incentive to increase productivity. Isn't it logical to assume that a larger productivity factor should apply to the local telephone companies because they have had no previous incentive to be efficient?

Answer: The Commission's analysis of the wide range of productivity data contained in the record of the price cap proceeding led it to conclude that the best estimate of potential annual productivity gain by AT&T and the local telephone company industry is 2.5 percent over and above the level achieved by the economy as a whole. The Commission increased this figure to 3 percent in order to assure that consumers benefit from price cap regulation. Although the growth of competition in the business of providing interstate long-distance services has no doubt increased AT&T's incentive to achieve productivity gains, the presence or absence of competition is not the only factor affecting a carrier's incentive to achieve such gains.

The Commission has carefully and thoroughly reviewed arguments that AT&T and BOC productivity would differ because of their respective characteristics, such as size, technology in use, technology likely to be brought on line in the foreseeable future, investment patterns, or a comparison of the rates one carrier or group of carriers charges in relation to another carrier or group of carriers. In each instance, the Commission has explained why it found such arguments unpersuasive, and it tentatively has concluded that such arguments provide no basis for applying different productivity factors to AT&T and the LECs.

For example, although we fully recognize, and are impressed by, the efficiencies resulting from advances in telecommunications technology in recent years, no commenter has provided empirical evidence that such advances are having or will have a sudden, revolutionary impact on the total factor productivity of the telephone industry as a whole, of AT&T, or the LECs. Indeed, it is unlikely that such evidence exists. Telephone companies provide their services using a large mix of labor, equipment, and materials. Only a portion of this mix is affected by the technological advancements described by the commenters.

Moreover, even that portion of the mix which is the subject of advancement, such as switching equipment, is replaced gradually over time, so the impact on productivity of any particular technological advancement is likely to be realized slowly and steadily, as it is worked into the mix, rather than in an abrupt manner. The long term data indicate that the telecommunications industry has experienced productivity gains in excess of those experienced by the economy as a whole for many decades, as should be expected in an industry marked by steady technological advancement. The record provides no basis to believe that these gains will suddenly cease, even for those companies that have installed what today is considered state-of-the-art technology; nor does the record provide any persuasive evidence that such gains will suddenly accelerate. And, there is no persuasive evidence that the productivity effects of technological advancement are being realized to a greater degree by the LECs relative to AT&T, or vice versa. Therefore, the Commission tentatively has concluded that arguments of this nature, unsupported by empirical evidence, provide no basis for selecting a productivity number that differs from the long term historical number of 2.5 percent relative to the economy as a whole.

It is important to note that while productivity may change from year to year in response to a number of factors, a long term average of historically achieved productivity is likely to be the best predictor of future productivity gains. For this reason, the Commission relied heavily on long term data in selecting a productivity factor to use in connection with the price cap regulation of both AT&T and the local telephone companies.

Much of the long term productivity data in the price cap record concern unified, pre-divestiture Bell System operations. In other words, these data do not distinguish interstate long distance operations from interstate local telephone company operations. This raises the issue of whether such data can serve as a basis for predicting the potential future productivity gains of the divested components of that system. Some commenters in the proceeding advanced specific arguments why these data should not be used for predictions and why the Commission should select a different number than suggested by the long term data. Although the Commission did not find such arguments persuasive, it recognized that its analysis of post-divestiture local telephone companies did not provide the same level of corroboration for its 2.5 percent prediction as that provided by an analysis of AT&T post-divestiture data. Therefore, the Commission is proposing to add to its price cap plan for local telephone companies an additional regulatory backstop to ensure that their rates remain within the zone of reasonableness.

The Commission's primary proposal for this backstop is a mechanism, which we refer to as an "automatic stabilizer," that would be used as part of the tariff review process. For carriers seeking streamlined tariff review under price caps, the stabilizer would force rate adjustments, thus providing an additional measure of assurance that such rates fall within a zone of reasonableness.

The Commission also is seeking comment on a potential alternative to the stabilizer, which would consist of a detailed review of the price cap system for local telephone companies beginning two years after their first price cap tariffs become effective.

Because the inclusion of either of these backstops into the local telephone company price cap plan might be perceived to be a material modification of previous Commission proposals, the Commission is providing notice of its proposal and seeking comment thereon.

Question: Some argue that price caps will give carriers the incentive to abandon geographic rate averaging. Would you support legislation which mandates that all long distance companies charge geographically averaged rates?

Answer: I personally am committed to the policy of geographic rate averaging, and I assure you that all decisions that have been and will be made in the price cap proceeding will be consistent with -- and will in no way undermine -- geographic rate averaging. I think the most prudent and effective means of addressing this issue at this time is to continue the policy approach followed by every Commission since 1934, which is to: (1) recognize the strong economic incentives AT&T and other interexchange carriers have in maintaining averaged rates; (2) reaffirm through unambiguous statements the Commission's policy strongly favoring rate averaging; and (3) take actions to back up this policy by establishing and maintaining programs that affirmatively bolster interexchange carriers' existing economic incentives to maintain averaged rate schedules. I want to take this opportunity to review briefly each of the three components of this approach.

First, the incentives long distance carriers have to maintain geographically averaged rate schedules are easily recognized. AT&T began averaging its toll rates geographically long before the Commission was established by Congress in 1934. The OCCs choose to rate average geographically even though they are not compelled by regulation to do so. This is unsurprising, considering the very large administrative costs that would result from an attempt to calculate, market, and bill a system of deaveraged rates.

Second, the Commission repeatedly has voiced its support for the continuation of geographic rate averaging. Most recently, the incentive regulation plan adopted by the Commission on March 16, 1989, reaffirms support for this policy. The order adopted by the Commission contains clear and unambiguous language stating that any AT&T tariff proposal to deaverage rates will be extended for the full notice period provided under Section 203 of the Communications Act, and will be suspended for the full period provided for under Section 204 of the Act and investigated. This would provide the Commission with eight months to consider such a tariff proposal. Given the importance of the Commission's policy favoring averaging, I would anticipate that the Commission would complete its investigation during the eight-month period.

AT&T would have the burden of proof of justifying its deaveraging proposal, and I would expect this to be a very difficult task under our policy.

Third, the records of many Commission proceedings held over the years -- particularly the many and various aspects of the Dockets 70-78 and 80-286 access charge proceedings -- attest to the fact that the continuation of average rates does not depend primarily on whether the Commission adopts an edict stating that rates shall be averaged. Rather, the continuation of averaged rates depends in large measure on whether the Commission takes affirmative steps to develop and implement the kinds of policies and programs that are tailored to complement and reinforce long distance carriers' incentives to maintain averaged rate schedules. Put another way, no rule simply commanding averaged rates likely could be sustained in the long run unless the Commission provides the means to maintain averaging. We have consistently adopted policies and promulgated rules that address the possible causes of geographically averaged rates, and we will continue to do so.

Many of the most important of these policies involve rules and procedures governing the manner in which local exchange carriers (LECs) recover the costs they incur in providing interstate services, particularly their common line costs. These costs vary from carrier to carrier, often widely. The Commission currently administers a series of policies and rules designed to ensure that these cost differences do not put pressure on long distance carriers to geographically deaverage MTS toll rates. The bulk of these policies and rules take the form of technical provisions within Part 69 of the Commission's rules, including the so-called Unity 1-A safeguards adopted by the Commission two years ago.

We intend to retain all of these policies and rules relating to rate averaging under our revised price cap proposal for local telephone companies. Let me describe the most important of them in some detail.

Under those policies and rules, LECs currently have the option of proposing rates for their interstate switched access services that are averaged at a level as low as the study area(s) they use for purposes of jurisdictional separations.[1] These policies and rules are the result of a series of Commission decisions made during the past six years in notice and comment rulemaking proceedings.[2]

In 1983, for example, the Commission adopted a plan, commonly known as the access charge plan, that establishes the rate structure all LECs must follow in recovering their costs of providing switched interstate basic services. That plan establishes two main categories of LEC charges for the recovery of costs that affect rate averaging: (1) traffic sensitive charges; and (2) the carrier common line charge. In conjunction with adopting the plan, the Commission determined that the public interest did not require LECs to participate in cost pooling and joint tariffing arrangements with regard to their traffic sensitive charges, but that cost pooling and joint tariffing arrangements would be required for LEC common line cost recovery. The Commission made these determinations in large measure because it concluded that a cost pooling and joint tariffing arrangement for common line costs was necessary at that time to prevent undue pressures on long-distance carriers to deaverage their rates because of the then-existing disparities among LECs with regard to common line costs.[3]

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[1] A study area generally is a local telephone company's service area. For the Bell Operating Companies, which comprise 80% of the industry, study areas span entire states. As the glossary to Part 36 of the Commission's rules specifies, the boundaries of study areas were frozen as of November 15, 1984. Thus no carrier is able to manipulate those boundaries to disadvantage rural areas by separating them from nearby urban areas.

[2] See e.g., MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, 93 FCC 2nd 241 (1983) (Access Charge Order); MTS and WATS Market Structure, Recommended Decision and Order, CC Docket Nos. 78-72 and 80-286, FCC 87J-1, 2 FCC Rcd. 2324 (1987) (Joint Board Order); MTS and WATS Market Structure, Report and Order, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987) (Pooling Modifications Order).

The cost pooling and joint tariffing arrangments mandated by the Commission, which are administered by the National Exchange Carrier Association (NECA) in accordance with Commission rules, significantly limit the disparity in access rates that long distance carriers have to pay different local exchange carriers. The reduction in this disparity lessens pressure on long distance carriers to deaverage their own rate structures.

In line with the Commission's legal obligation to review its policies and rules from time to time to ensure they continue to further the goals they originally were designed to achieve, the Commission in 1986 asked a Federal-State Joint Board to review certain portions of the access charge plan, including the determination to require a cost pooling and joint tariffing arrangement for carrier common line cost recovery. This Joint Board, which was comprised of four state commissioners and three FCC commissioners, conducted a proceeding in accordance with notice and comment procedures, considered the issues referred to it, and issued a series of recommendations to this Commission. These included a recommendation that this Commission modify the pooling requirement in a way that preserves long distance carriers' incentives to maintain geographically averaged rates yet permits individual LECs greater flexibility to tariff rates based on their own cost of service.[4] With minor exceptions, this Commission subsequently adopted the Joint Board's recommendations.[5]

In making their determinations about pooling and LEC averaging, the Commission and the Joint Board listened carefully to the concerns expressed by proponents of geographically averaged rates and went to great lengths to craft policies that would preserve geographic rate averaging by maintaining significant limits on the disparity in access rates that long distance carriers have to pay different local exchange carriers.[6]

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[3] See Access Charge Order, 97 FCC 2nd at 326-330.

[4] See Joint Board Order.

[5] See Pooling Modification Order.

[6] These arrangements also provide several other benefits to small telephone companies and their subscribers. They eliminate direct tariff filing burdens on small companies, reduce their operating risks substantially, and greatly increase their ability to achieve a steady interstate rate of return on investment. All of these benefits ultimately redound to subscribers because such benefits help to ensure that telephone service is available at reasonable rates. Thus, in addition to supporting rate averaging, such arrangements promote the important goal of universal service in many different ways.

No commenter in the price cap proceeding offered detailed suggestions about how the benefits of price cap regulation could be obtained in an environment in which telephone companies pool costs and revenues, and share operating risks. In the May 1988 Further Notice in the price cap proceeding, the Commission tentatively concluded that obtaining those benefits would require fundamental alterations to the purposes, structure, and operation of the pools, or the elimination of pooling. Confronted with the choice between price cap implementation and continuing policies that serve small companies and their subscribers, the Commission chose the latter. This choice was explained in the Further Notice:

> The primary goal of this proceeding -- establishing regulatory methods that benefit consumers by promoting efficient dominant carrier operations -- responds to just one aspect of our mandate under the Communications Act to regulate in the public interest. This goal must give way when, as here, it appears to conflict with programs and policies developed over many years to further our goal of achieving universal service. We conclude, therefore, that our current pooling rules and procedures will not be altered by the policies proposed in this proceeding, and that we will continue to regulate such pools pursuant to traditional rate-of-return principles.

The incentive regulation order adopted by the Commission on March 16th proposes no changes to existing rules and procedures governing the pooling process, including the rules governing transitional and long-term support payments. Also, no changes are proposed to rules and procedures commonly associated with the pooling process or necessary to assure that the pools can continue to be administered effectively, such as the Uniform System of Accounts (USOA) and current jurisdictional separations rules. In addition, we are proposing no changes in the rules governing the administration of the Commission's High Cost Fund support program, including the rule amendments adopted by the Commission that target more support for small telephone companies.

Moreover, the incentive regulation proposal for LECs adopted by the Commission on March 16th is crafted to ensure that implementation of price caps would not disturb the policies and rules developed over the years to preserve rate averaging. Specifically, the Commission tentatively has adopted a proposal to establish a separate "basket" for common line costs for LECs operating pursuant to price cap regulation.

The Commission's actions thus far in the price cap proceeding demonstrate its strong commitment to the continuation of geographically averaged long distance rates. You may be assured that this commitment will continue to guide the Commission in future proceedings in this Docket.

Question: Do you intend to conclude all ongoing tariff investigations before price caps can take effect for both AT&T and the local telephone companies?

Answer: Investigations of nearly all AT&T rates used as the basis for initiating price cap regulation have been concluded. Recent amendments to the Communications Act require that all investigations of AT&T or local telephone company rates initiated prior to November 2, 1988, be completed by November 2, 1989. These amendments also require that the Commission complete any investigation initiated after November 2, 1988, within one year after the rate takes effect or, in complex cases, within fifteen months after the rate under investigation takes effect. The Commission currently is devoting considerable resources to pending investigations in order to assure that all of them are concluded within deadlines established by these amendments.

The existence of unresolved investigations, however, need not, and should not delay implementation of price cap regulation. The Act specifically contemplates that rates will take effect subject to on-going investigation. Moreover, should the Commission find at the conclusion of a particular investigation that a currently effective rate is unlawful, there is nothing about price cap regulation which would preclude the Commission from adjusting the unlawful rate and ordering a refund, if appropriate.

Question: AT&T's new custom-designed tariffs fall outside of the price cap plan. Does this mean that if AT&T wishes to avoid the pricing constraints under price caps, it only needs to bundle several services together under Tariff 12?

Answer: No. The exclusion of so-called "custom" tariffs from price cap regulation means that such tariffs will continue to be subject to the full panoply of existing regulatory rules and procedures, including scrutiny by the Commission and interested parties through the tariff review process.

LOTTERY PROPOSAL

Question: You have proposed to replace the comparative hearing process for selecting new broadcast licenses with a lottery. While Congress permitted the lottery statute to be employed in this way, we did state that it should be a last resort. Has the comparative hearing process totally broken down, and have you exhausted all other remedies?

Answer: In response to your question, there appears to be a widespread belief among federal policymakers, communications attorneys, and public interest groups that problems with the existing comparative process are sufficient in magnitude as to warrant some type of Commission intervention or reform. Based upon this general consensus and its over 20 years of experience in administering the existing process, the Commission has proposed the use of lotteries as an alternative means of selecting among mutually exclusive applicants for new broadcast licenses. In making this proposal, the Commission pointed out that the current process is difficult to administer from procedural and substantive standpoints, appears to delay significantly new service to the public, lacks consistency or predictability as a result of the different outcomes reached based on what appear to be marginal, or, seemingly inconsequential, differences among applicants, and is exceedingly time consuming and expensive to applicants and to the Commission.

Although the Commission's proposal does raise serious questions about the overall efficacy and utility of the existing process, it would be inappropriate to characterize or otherwise treat the Commission's action as inescapably leading to the conclusion that the comparative hearing process has broken down. Nothing in either the lottery statute or its legislative history that suggests that implementation of a lottery as an alternative licensing mechanism is precluded except as a last resort. Although Congress has delineated certain factors for the Commission to consider in deciding whether to use lotteries, these factors have been held not to "rise to the level of statutory requirements binding on the Commission." Telecommunications Research and Action Center v. FCC, 836 F.2d 1349, 1362 (D.C. Cir. 1988). Nevertheless, in spite of this holding, the Commission stated its intent to consider these factors "in order to help inform our analysis of the suitability of using lotteries for initial licensing of full power broadcast facilities," Notice, 4 FCC Rcd. 2256, 2261, at para. 37, (1989) and has preliminarily determined that adequate justification for its proposal has been met, id. at para. 41. Therefore, even though we do not believe that the Commission is obligated to exhaust all possible remedies prior to implementation of a lottery proceeding, we do believe that ample justification has been given for advancing this proposal both under the statute and its accompanying legislative history. Moreover, as stated in our Notice, while some improvements can, of course, be made to the existing process, it is unlikely that new comparative criteria could be developed that would resolve or significantly ameloriate the difficulties that are inherent in the comparative hearing process. Any alternative criteria adopted would still necessitate conducting comparative hearings and would likely result in cases being decided on minor distinctions between qualified applicants that are subjective in nature.

Question: Also in your lottery proposal, the Commission is considering eliminating the preference for females. Elimination of the female preference would directly contradict the language in last year's appropriations bill. Could you explain how the Commission believes that the lottery proposal will satisfy this legislative mandate?

Answer: We do not believe that the restrictions Congress inserted into the FCC's appropriations for FY 1988 and FY 1989 that prohibit the Commission from spending funds to repeal, retroactively restrict, or continue a reexamination of current rules and policies to promote ownership of broadcast licenses by minorities and women, are applicable to the Commission's lottery proposal. That legislation is expressly directed at the comparative licensing process, not lotteries, and neither the express words of the statute nor the legislative history accompanying it suggests Congress' intent to apply this restriction to lotteries under Section 309(i) or to limit the Commission's discretion under Section 309(i) to determine when a random selection process would serve the public interest. However, even though we do not believe that the appropriations language encompasses, nor was meant to encompass, lotteries, a licensing process expressly authorized by Congress under Section 309(i) that is entirely different than the existing comparative licensing process, we have nevertheless invited comment on our analysis.

Moreover, we also pointed out in our Notice that, consistent with our earlier determination, inclusion of a preference for women under either the "media ownership" or "minority ownership" preferences provided under Section 309(i) would not be statutorily permissible and that this interpretation had been judicially affirmed. Women's Preference Order, 50 Fed. Reg. 36056 (Sept. 5, 1985), Pappas v. FCC, 807 F. or 2d 1019, 1024 (D.C. Cir. 1986). Again, there is nothing in the appropriations language that suggests Congress meant to override the Commission's and the court's interpretations on this matter. Nevertheless, consistent with dictum provided in the Pappas case, we have invited comment on whether it is possible to create additional preferences for women or others without diluting the minority or diversification preferences provided under the statute and whether these possible preferences (or any others) would serve the public interest. We emphasized that if we ultimately were to decide to retain the comparative process in its existing form, we would, of course, be required, consistent with the appropriations language, to leave intact the minority and women preferences.

Question: In the Marcos Island (FCC 88-425) case, the Commission permitted a third party to buy out the competing applicants for a new broadcast station. Please explain why this is not a private auction, which undermines the comparative hearing process.

Answer: The Marco, Florida case, which is currently pending before the Commission on reconsideration, is a contested proceeding involving mutually exclusive applications for a broadcast authorization. Consequently, the case is a "restricted adjudicative proceeding" and will remain so until it is no longer subject to Commission or court review or reconsideration, and the Commission's ex parte rules prevent me from discussing any of the substantive issues involved at this time. See 47 CFR Sections 1.1202, 1.1208. In their petitions for reconsideration, several parties raise the question of whether the Marco settlement constitutes a "private auction." The Commission will therefore address this issue when it acts on those petitions. We will provide you with a copy of our final action as soon as it is released.

TV-MARTI

Question: As you may know, I am the sponsor of television broadcasting to Cuba by the United States Information Agency. I know that the FCC has been involved with the TV-Marti Task Force, particularly with the allocation of a channel. Please bring us up-to-date on how things stand with getting the channel allocated.

Answer: Because of existing stations in Florida and Cuba the only suitable channel for broadcasting to Havana is channel 13. That channel is currently allotted to Key West and has a permittee (Palmetto) that expects to begin broadcasting this summer. Palmetto has expressed some willingness to share its channel with TV Marti during a defined period of testing. Channel 8 is also allotted to Key West but its permittee (Hispanic Keys) has not yet begun construction. Hispanic Keys has indicated a willingness to lease its channel to the government for an indefinite period. As of May 19, 1989 USIA was attempting to persuade Palmetto and Hispanic Keys to swap channels. On the basis of our understanding of the parties' present positions, if agreement is reached Palmetto will modify its facility to operate on channel 8, USIA will have channel 13 available for testing (and permanent operations) and Hispanic Keys will defer construction on channel 13 until TV Marti ceases operations.

HIGH DEFINITION TELEVISION

Question: Mr. Patrick, in your statement you say: "A proper consumer-oriented approach to high definition tv could open enormous opportunities for commercial and consumer applications of high resolution video systems." What do you visualize as a proper consumer approach?

Answer: By "consumer-oriented approach," I refer to a method of analyzing various regulatory options from a consumer perspective. Under this approach, the effects on particular firms or industry segments are used to help assess the advantage and disadvantage to consumers of the various options. While I believe this approach is the best to take on all regulatory matters generally, it is particularly fitting in the case of HDTV. Here there are many tradeoffs to consider, and many different industries, and it will be very difficult to make all, or, most, of the affected parties happy. I'm afraid that any result that is forged on the basis of equity to industry participants may not be the best result for consumers. Thus, it is important for this Commission, in analyzing the various options, to always keep the interests of consumers paramount.

Question: How much has the FCC budgeted for work associated with high definition television?

Answer: The Commission has allocated approximately $665,000 for work in FY 1990 associated with high definition television. FCC Office of Engineering and Technology staff studies of spectrum options and HDTV feasibility already underway are likely to continue in that fiscal year, and other HDTV subjects are also likely to require study by OET. These anticipated activities and areas of work together with the record compiled thus far as a result of the Tentative Decision and Further Notice of Inquiry issued in September, 1988, and other HDTV developments will probably lead to further FCC action by the close of FY 1989 and continued FCC work on HDTV issues throughout FY 1990.

With respect to policy analysis related to the rulemaking proceeding, and related work of the FCC Advisory Committee on Advanced Television Service, the Commission plans to devote 3.8 workyears to these efforts. With respect to technical analysis, the Commission plans to devote 3.9 staff years of effort. Administrative support staff anticipated for FY 1990 includes a total of 1.2 workyears in FY 1990. In summary, the Commission plans to devote approximately 8.9 workyears of effort to high definition television in FY 1990.

We anticipate that work on this project will also continue for the next two fiscal years, FY 1991 and FY 1992. For this reason, we also anticipate a funding requirement for staff and support associated with high definition television continuing through 1992.

AUTOMATION

The FCC's $6,319,000 program includes $2,608,000 for additional or replacement of automation capability.

Question: What would be the impact of delaying the automation effort for a year?

Answer: The following impacts will occur if acquisition of the proposed FCC automation equipment and services are delayed for a year:

The existing mainframe/distributed processing balance must be analyzed and evaluated to determine how to best allocate automation resources for a major new computer or computer system. Delaying this analysis for a year will prolong the present situation of reliance on an obsolete mainframe for the majority of the Commission's applications processing which has experienced excessive downtime during the past year.

The FOB computer network is the nervous system of the field offices, providing management with information on workload and resource allocation. The original manufacturer no longer supports the network, therefore the regularly recurrent failures are more and more difficult to repair. Delaying replacement of the system will be particularly disruptive of FOB's work at all levels of operation.

Phase III of Automated Land Mobile Applications Processing System (ALMAPS) would not be implemented. ALMAPS Phase III is designed to automate many of the manual labor intensive work in the receipt, reviewing and processing of private radio land mobile applications. Delaying implementation of this final phase of ALMAPS will delay the labor savings and increased speed of service anticipated by implementation of this system.

International negotiations on the use of the expanded AM band require analytical support on the proposals. A one year delay in acquiring the equipment needed for the analysis will greatly hamper the development of these international agreements.

The Commission will be unable to use state-of-the-art technology to meet its regulatory responsibilities. It will be curtailed in addressing critical problems of reference service to its staff and the public highlighted in recent Congressional proceedings and reports.

200 staff members will not have access to basic office automation capabilities.

Question: Is the purpose of these enhancements to merely maintain speed of service or can we expect lower personnel levels due to increased automation?

Answer: In FY 1989 the Commission's automation budget base was drastically reduced and computer production support work was deferred to offset the compensation deficit. The main purpose of present enhancements is to reduce the backlogs which resulted from those cutbacks, and to return speed-of-service to an acceptable level. There are, however, several enhancements which will result in actually lowering personnel levels. For example, implementation of an optical storage system in the Docket Branch will result in a reduction of three staff years from that organization.

In addition, office automation, especially word processing, will considerably increase the productivity of professional and paraprofessional staff while at the same time reduce clerical support requirements. In some cases, we have experienced a fifty percent reduction in clerical support requirements after providing staff with office automation.

CONSOLIDATION OF FCC OFFICES

Elsewhere in this bill we are asked for $3,361,000 to further consolidate NOAA in Silver Spring, $1,567,000 to consolidate SBA in downtown Washington, and $200,000 towards moving USIA to a new Federal Triangle Building. The Commission's 1990 request includes $385,000 for studies for consolidation and relocation of the FCC to a new site in 1991.

Question: You indicate in your statement that FCC employment is down by almost 400 full-time permanent employees. Why do you need new space when you are employing less people?

Answer: The requirement for consolidation will not be obviated by staff reductions. This consolidation, as determined by General Services Administration, is primarily predicated on the functional obsolescence of our current commercially leased buildings and the high cost the government would pay to renovate this space to bring them into compliance with new building standards for safety and efficiency.

The FCC has advanced technologically over the past few years as we have attempted to balance staff reductions by increasing the use of office automation procedures and equipment. Our three commercially leased buildings were not designed to keep pace with the increased demand for electrical power, building cooling capacity and new mechanical features. Reference rooms and other public services are dispersed and improvements in these facilities cannot be achieved within our current space resources.

According to the General Services Administration, the relocation to new space will provide the FCC with the opportunity to make more efficient use of reduced space resources and to take advantage of our technological support services. Our current space cannot produce these benefits on a cost effective basis.

The decrease of 400 full-time permanent employees took place over a period of 8 years. Moreover, not all of these staff reductions have occurred in the headquarters office. About one-fourth were in our field installations. Our space requirement in the new building considers the decreased staff level and any restoration of positions which would bring us to FY 1988 authorized ceilings.

Question: Where is the Commission planning to move?

Answer: The Communications Act of 1934, as amended, requires the Federal Communications Commission headquarters offices to be located within the District of Columbia. Specifically, we are seeking a building location within the District of Columbia which ensures the Congress, the general public, law firms and the private sector with convenient and ready access to the FCC. Accordingly, our delineated area of consideration is in an area in downtown Washington, D.C. within the boundaries of P Street on the North, 23rd Street on the West, Ohio Drive on the Southwest along Interstate 395 on the South to 1st Street, S.E. and N.E. on the East. In addition, the building site must be within 2000 walkable linear feet from an operating metrorail station. The General Services Administration issued the Solicitation for Offers (SFO) for the FCC's consolidated facility on April 5, 1989. Responses to this solicitation are expected by July 10, 1989, but the specific location of the new office site may not be identified until January 1990.

Question: What will be the additional cost of moving the Commission? For instance, at NOAA -- even though everybody has a desk and chair --they think everybody ought to get new furniture as part of the move to Silver Spring?

Answer: One time move costs are estimated at $10 million over two or three years. Approximately 60% of this expense is for moving services, bridging rent and telecommunications services/equipment. The balance is for purchase of systems type office furniture.

When the General Services Administration surveyed the FCC's space requirements in July 1988, they concluded that we must convert a majority of our office workstations from conventional furniture use to systems furniture configurations in order to achieve the mandated reduction of over 30,000 square feet.

Because our offices are 100% conventional furniture, we have worked with GSA to reduce the amount of systems furniture we must purchase by developing workstation plans which allow us to use as much of our existing furniture as possible.

Question: In view of the overall budgetary constraints, is it really necessary for the Commission to move?

Answer: The Federal Communications Commission's headquarters offices are currently located in three separate leased commercial office buildings which are functionally obsolete. According to the General Services Administration, the useful life of these buildings has been surpassed and it is no longer cost effective to upgrade these buildings to meet new safety codes, satisfy requirements for handicapped access, improve air quality or expand mechanical and electrical services to meet the FCC's operational requirements.

The General Services Administration believes the relocation of the FCC to a consolidated facility will generate a cost savings of $28 million to the government. The figure is based on GSA's estimate of present value cost savings of $8 million and a $20 million savings in rent cost because we will reduce the amount of leased space in the new building. Additional costs savings will be realized because of lower building maintenance cost, reduced energy consumption and lower administrative/overhead expenses.

We believe that service to the public will be improved by consolidating reference rooms and similar services. By locating office space in a single building, we can make more efficient use of our workspace and increase the productivity of our staff.

INSPECTOR GENERAL

Question: The "Inspector General Act Amendments of 1988", which was signed into law in October 1988, required the FCC to establish and maintain an Office of Inspector General within 180 days of enactment. What action has the Commission taken to comply with this requirement?

Answer: On March 29, 1989 the Commission adopted an Order creating the Office of Inspector General (OIG) and transferring to it those audit and investigatory functions previously handled by the Internal Review and Security Division. In accordance with the new law, the OIG has no other program operating responsibilities. On April 11, 1989 the Commission appointed Mr. John Kamp as interim Inspector General.

Question: What will be the grade level for the new Inspector General?

Answer: The position of Inspector General has been posted at the Senior Executive level.

Question: How many staff members will be assigned to the Office initially, and what will be the ultimate staffing level?

Answer: Initially, the OIG was allocated three (3) positions: the Inspector General, an auditor or other professional staff, and a secretary or other support person. Our internal audit function within the Internal Review and Security Division, which has been quite active, involved a level of effort of approximately 1.5 workyears. The ultimate staffing level of the office will be determined by the Inspector General in accordance with the authority delegated to him by law. In future years the OIG will have a separate line item in the Commission's budget and will be expected to justify additional needs -- including staff -- to OMB and the Congress.

Question: How much is in the FY 1990 request for the Office of Inspector General?

Answer: Because the FY 1990 budget submission was prepared prior to the passage of the revised Inspector General legislation, no money was specifically earmarked for this office. We intend to provide the Inspector General with funding for three positions, office space, telephone, office automation and $10,000 for travel and other expenses from within the Commission's FY 1990 appropriation. Beginning in FY 1991, we will provide the OIG with a separate line item within the Commission's budget estimates. The OIG would then identify and justify its budget requirements to OMB and the Congress as part of the Commission's overall budget request.

FORT LAUDERDALE MONITORING STATION

Question: Last year we extended the availability of the funds for the relocation of the Fort Lauderdale Monitoring Station. The budget shows that $1,247,000 was carried forward for that project. What is the status of that project and am I correct that approximately $400,000 of the balance will not be needed?

Answer: The relocation of the Fort Lauderdale Monitoring Station to Vero Beach, Florida has been completed and our records indicate that the balance of approximately $400,000 remaining in the indefinite appropriation will not be required for any additional relocation costs.

Question: The Commission's budget states that there are no non-recurring 1989 costs. However, in the summary of changes the $1,247,000 is added in to the Commission's budget but is not deducted. Why?

Answer: The $1,247,000 associated with the final phase of relocating the Fort Lauderdale Monitoring Station to Vero Beach is a separate appropriation of funds, or indefinite appropriation. The costs associated with the completion of this project are not one time costs associated with FY 1989 programmatic requirements funded through our FY 1989 Appropriation of $99,613,000. The $1,247,000 is deducted as an offset in Section A of the "built-in changes" portion of the summary of changes you referenced in your question. The various cost categories summarized in Section A reflect the net change (plus and minus) including the reduction of costs associated with the Fort Lauderdale/Vero Beach Monitoring Station. The Budget In Brief

Section of our FY 1990 budget also reflects the reduction of the $1,247,000 to our Budget Authority for FY 1990.

The entire $1,247,000 has always been identified as an outlay in FY 1989 in both the Reagan and Bush Congressional Budgets proposed for FY 1990.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

SATELLITE DISH QUESTIONS

Question: I continue to remain concerned about a number of issues affecting satellite dish owners. There are roughly 35,000 satellite home dish owners in Arkansas, and I am not satisfied with the amount of competition in the cable industry or the cost these consumers must pay for descrambled programming.

As you know, satellite cable programming networks have utilized the Videocipher II technology as the de facto industry standard for descrambling. Many of my constituents are concerned that their decoding equipment will become obsolete. In the Satellite Home Viewers Act of 1988, the FCC was directed to initiate an inquiry into the need for a universal decryption standard.

1. Could you please comment on the status of this inquiry? What has been learned so far?

2. Under last year's law the FCC was instructed to take into account consumer costs and benefits in developing its inquiry. What specific information can you provide in this regard?

Answer: The Satellite Home Viewer Act of 1988 directs the FCC to "initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing." Among the factors that the statute directs the FCC to consider are "consumer costs and benefits of any such standard, including consumer investment in equipment in operation." Should the inquiry establish that a standard is "necessary in the public interest," the FCC is directed to initiate a rulemaking to set a standard.

Pursuant to Congressional instructions, the FCC adopted a Notice of Inquiry on encryption standards on March 30, 1989. It was released on April 14, 1989. It solicits comment on whether the public interest would be served by a government-mandated decoder standard and sets forth the particular factors that Congress indicated should be explored. The deadline for submission of comments is June 19, 1989. The deadline for reply comments is July 19, 1989. These dates reflect a recently-granted two week extension of the original deadlines. The information that the FCC will use in its analysis of encryption standards will come primarily from the comments that interested members of the public will submit. Copies of the Notice of Inquiry and the Order extending the comment deadlines are attached.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 89-78

In the Matter of

Inquiry into the Need for
A Universal Encryption Standard
for Satellite Cable Programming

NOTICE OF INQUIRY

Adopted: March 30, 1989; Released: April 14, 1989

By the Commission:

I. INTRODUCTION

1. The Satellite Home Viewer Act of 1988 directs the Commission to initiate three inquiries regarding the home satellite dish (HSD) programming market.[1] This inquiry concerns "the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing." The Act provides that, if the Commission finds that such a standard "is necessary and in the public interest," then it "shall initiate a Rule Making to establish such a standard."[2] Congress has called on the Commission before to undertake an investigation of the HSD programming market.[3] At that time, we considered and rejected the imposition of a government-mandated encryption standard for satellite cable programming.[4] In this inquiry, however, we shall undertake a thorough re-examination of the issue of mandated encryption standards.

2. Congress directed us to take into account six factors in our standards inquiry. They are

> (1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;
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> (2) incorporation of technological enhancements, including advanced television formats;
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> (3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;
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> (4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;
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> (5) the effect of any such standard on competition in the manufacture of decryption equipment; and
>
> (6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.[5]

The comments in response to this Notice may bring other germane matters to our attention. Our conclusion in this inquiry will be based on an analysis of all the relevant factors.

II. BACKGROUND

3. The Cable Communications Policy Act of 1984 amended the Communications Act of 1934 to make it clear that the general prohibition of unauthorized interception and utilization of radio communications applies to encrypted satellite cable programming.[6] The statute defines "satellite cable programming" as "video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers."[7]

4. Currently, a large number of satellite cable programmers scramble their signals.[8] The encryption technology used is the Videocipher II (VC II). This system was developed by a firm called M/A Com, Inc. under contract to Home Box Office (HBO). By its own account, HBO's initial goal in scrambling its signals was to thwart commercial theft of its services (*i.e.*, by small cable systems and commercial establishments). When HBO issued its request for proposals in 1982, relatively few households had HSD systems (*i.e.*, dish antennas, satellite receivers, and associated components) and HSD equipment was quite expensive. The original system that M/A Com, Inc. developed, known as the Videocipher I, utilized decoders that were to have retailed at $3,500 each.

5. In 1984, after concluding that the HSD market was growing faster than it had anticipated, HBO contracted with M/A Com, Inc. to modify the encryption system in order to make sales to HSD households practical. HBO instructed M/A Com, Inc. to develop a system for which the decoders cost substantially less than those for the Videocipher I and for which the decoders were compatible with the vast majority of HSD systems. The resulting system was the Videocipher II (VC II). The initial retail price of decoders was $395.

6. On January 15, 1986, HBO became the first major satellite cable program service to scramble its satellite feeds.[9] In March of 1986, Eastern Microwave scrambled its satellite feed of superstation WOR using the VC II system. Showtime and the Movie Channel, both owned by Viacom, scrambled their satellite signals in May of 1986, also using the VC II. In September of 1986, the General Instrument Corporation (GIC) purchased the Video Products Division of M/A Com, Inc., which included the VC II business.[10]

7. In the meantime, concern was developing about whether a standard encryption system would be adopted and about the price and availability of programming to HSD households. This prompted the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Energy and Commerce Committee to examine HSD issues at hearings on March 6 and June 12, 1986. At the latter hearing, the Commission agreed to a Congressional request to investigate the terms and conditions under which satellite programming was being scrambled and offered to HSD owners.[11]

8. The inquiry examined, among other topics, the development of descrambling equipment, whether the marketplace was generating a *de facto* standard, the marketing and distribution systems that were developing for programming, and the legal and policy issues related to

the scrambling of "network feeds" and "superstations." The results of the Commission's inquiry are set forth in the *Report* and the *Second Report*.[12]

9. In our earlier inquiry, we determined that the public interest would not be served by a government-mandated encryption standard.[13] This decision was based on two conclusions. First, we found that the marketplace had settled on the VC II as a *de facto* standard, thus freeing consumers from the necessity of purchasing more than one decoder.[14] Second, we found that a mandated standard would limit incentives to develop improvements in encryption technology for satellite cable programming, noting that the "need to secure government approval for a revision in the standard, in the face of likely opposition from entrenched partisans of the status quo, would likely discourage potential innovators."[15]

10. We are, of course, aware that changes in encryption technology are certainly possible. However, we noted that

> programmers and equipment manufacturers are unlikely to alienate customers and distributors by capriciously changing technologies in such a way as to obsolete existing equipment. Improvements are likely to be compatible with the original system and/or gradual, so that any incompatible equipment may be amortized. This does not rule out, nor should it, the chance of a quantum leap in technology leading to drastically improved quality or reduced cost.[16]

As part of our re-examination of the standards question, we invite comment on and critique of our earlier analysis.

11. Our earlier analysis led us to conclude that the number one problem facing the HSD industry today is theft of satellite program services (so-called "piracy"). Piracy entails the decoding of programming without the authorization of the programmer and without payment for the programming. At present, the techniques for unauthorized decryption all involve ownership of a legitimate VC II decoder. Decoder owners pay a fee for an additional chip (and associated software) which is attached to the decoder, enabling decryption without authorization. In the *Second Report*, we noted that unchecked piracy could halt satellite-to-home program distribution and recommended that Congress amend the Communications Act to increase the penalties for piracy.[17] The Satellite Home Viewer Act of 1988 contains provisions raising those penalties effective January 1, 1989.[18]

12. Unfortunately, theft of satellite program services remains a very substantial problem. The president of the Satellite Broadcasting and Communications Association (SBCA) recently estimated that 50 percent of decoders in use were "pirate boxes."[19] Estimates of this nature are necessarily imprecise, but this one appears to be widely accepted. According to GIC, there were 476,304 decoders legitimately authorized for service as of the end of January 1989.[20] GIC also reports that as of the end of 1988, it had shipped a total of 1,146,414 decoders or modules.[21] As of the end of 1988, a cumulative total of 2,098,690 HSD systems had been installed.[22] Assuming that all of these systems are in households and that there is one system per household, it is possible to conclude that at present, roughly three years after scrambling began, 22.7 percent of HSD households (*i.e.*, 476,304/2,098,690) have legally authorized VC II decoders, and 45.4 percent of such households (*i.e.*, 22.7 percent x 2) are making use of the VC II either legitimately or otherwise. The other 54.6 percent of HSD households do not have VC II decoders.

13. GIC, the SBCA, and others in the industry have taken a series of measures to combat piracy.[23] One technique that GIC has used is referred to as electronic countermeasures (ECM). This entails deauthorization of decoders that GIC has reason to believe have been altered to allow unauthorized reception of encrypted programming. Since GIC cannot know with certainty in advance of ECM if particular decoders are legitimate, this process involves some mistakes. In recent months, ECM have been instituted against as many as 300,000 decoders, with an error rate of three percent, according to GIC.[24]

14. GIC has also initiated a series of three software and hardware improvements in the VC II module. The third of these, known as the Videocipher II Plus (VC II Plus) is scheduled for introduction in late 1989.[25] The VC II Plus will incorporate software improvements and will make use of a new, very large scale integration (VLSI) chip. The VLSI chip will, for the first time, combine all of the security functions of the decoder on a single chip, which GIC believes will make it harder for pirates to penetrate.

15. In addition to the enhanced security features of the VC II Plus, GIC is calling attention to its higher "addressing rate."[26] This feature provides an increased capacity for sending the messages that authorize and reauthorize the units to decode scrambled programming. It will allow the system to service more customers and/or send reauthorization messages more frequently. This could improve the reliability of the monthly process of reauthorizing legitimate subscribers to scrambled program services.

16. The VC II Plus will also have 200 new "tier bits" in addition to the 56 that are also available on the VC II.[27] A tier bit is, in essence, an on-off switch that can be used to control access to an encrypted program channel or package of channels. The 56 VC II tier bits have all been reserved by programmers, but not all of them are in use yet. The VC II Plus system provides the capacity to serve a large number of additional programmers. After the VC II Plus is introduced, programming delivered using the first 56 tier bits will remain available to VC II owners.[28]

17. In recent months the Commission has received a number of identical complaints against GIC from HSD owners and retailers. A specimen is attached to this Notice as Appendix A. These complaints request the Commission to investigate "the encryption portion of the satellite television industry." They urge the Commission to examine issues relating to the theft of satellite program services and to establish an encryption standard. The complaints also contain certain allegations regarding GIC. These complaints will be considered as part of this proceeding.[29] We believe that the substantive issues raised in them are addressed by the analysis and questions in Section III, *infra*. However, we also specifically invite comment on any allegations and/or proposals in these complaints that are not covered in Section III.

III. ISSUES

18. The six subsections that make up this section are devoted to the six criteria that Congress instructed us to take into account in determining whether a mandatory encryption standard would be in the public interest. We

hope to establish a comprehensive record in this proceeding. Hence, we urge commenters to address the issues and answer the questions posed *infra* and to provide us with any additional information that they consider germane to our public interest determination regarding encryption standards for satellite cable programming. Commenters may wish to analyze the relationship between the standards issue and the feasibility of applying syndicated exclusivity rules to syndicated programming on broadcast stations retransmitted by satellite to HSD households. Congress directed us to initiate a combined inquiry and Rule Making proceeding on this matter (*supra* note 1) and it is possible that the choice of an encryption standard could affect the technical feasibility of implementing such syndicated exclusivity rules.

A. *Consumer Costs and Benefits of a Standard, Including Consumer Investment in Equipment in Operation*

19. Those who advocated a mandated encryption standard in our previous inquiry advanced two major arguments. First, they suggested that a standard would make it unnecessary for consumers to purchase more than one decoder. Second, they asserted that decoder prices would be lower under a standard. We seek comment on both of these propositions. In particular, does the widespread voluntary adoption of the VC II provide adequate assurance that consumers do not have to purchase multiple decoders? With respect to decoder prices, it is not clear to us how adoption of a standard *per se* could reduce them. It appears that proponents of this viewpoint are implicitly assuming that the standard would be accompanied by some sort of compulsory licensing of the technology at "reasonable" royalties.[30] We urge commenters to spell out the mechanism by which the adoption of a standard might affect decoder prices and to make explicit any assumptions they might make regarding licensing and royalty rates.

20. Proponents have also argued that adoption of a standard may reduce uncertainty among consumers regarding encryption technology. When satellite cable programmers were just beginning to scramble their signals, there was some confusion and uncertainty among consumers regarding what technology or technologies would be employed for scrambling. In such an environment, adoption of a standard could undoubtedly reduce consumer uncertainty. On the other hand, if the marketplace settles fairly promptly on a standard, uncertainty could be dispelled without government action. The general question here is whether, in the case of satellite cable programming encryption equipment, government action to set a standard would be quicker than private action. The specific question is whether the HSD programming market is now in a state of uncertainty regarding encryption standards. We invite comment on both. In particular, we seek information on the scrambling practices and plans of satellite cable programmers, in order to determine if the VC II remains a *de facto* industry standard.[31]

21. Proponents further claim that a mandated standard could dispel consumer fears that decoders might quickly become obsolete. A market-adopted standard could probably be changed more rapidly than a government-mandated one. We seek comment *infra* at paras 62-65 on the question of how long it would take for the Commission to establish a standard. We also invite comment on the time lag associated with administrative procedures to alter or change an existing standard. We note that the administrative process is a two-edged sword. It can provide consumers with advance warning of prospective changes in standards and slow the process of change, protecting against obsolescence of equipment. However, the same mechanism can work to reduce the incentives for developing improvements in the encryption system and allow partisans of the status quo to slow down the introduction of new technology.

22. In order to evaluate the possible benefits of a standard as "obsolescence insurance," it is important to consider the incentives of manufacturers and programmers and the characteristics of decoders. GIC, the patent holder and primary manufacturer of the VC II, has three groups of customers--consumers, other manufacturers (who purchase VC II modules for IRDs that they then sell to consumers), and programmers. The programmer customers play a key role because they are the ones that make the choice to adopt the VC II (or some other) encryption system. Consumer demand for VC II decoders and manufacturer demand for VC II modules is triggered by programmer utilization of the VC II system.

23. Programmers adopt an encryption system because they desire a mechanism by which they can collect compensation from HSD households for viewing of their product (and in order to ensure that they receive compensation from commercial users--cable systems, *etc.* --as well). They are interested in making it as easy as possible for consumers to purchase their program services. Hence, they have their own incentives to limit changes in decoder technology that make existing equipment obsolete. Because of their key role in choosing the encryption system used, prospective providers of encryption equipment must take programmers' demands into account. Thus, it appears that manufacturers too have incentives against obsoleting equipment excessively fast. We seek comment on the strength of this mechanism and its applicability to the satellite cable programming encryption standards situation.

24. The obsolescence insurance benefits of an encryption standard are also related to the rate of technical advance in satellite receiver equipment generally. An increasing share of decoders sold are IRDs, rather than standalone units.[32] Some HSD owners may find it desirable to replace their satellite receivers (including IRDs) before they have worn out in order to acquire new features unrelated to decoding capacity. We therefore seek comment on the technological depreciation characteristics of satellite receivers. The more frequently satellite receivers are replaced for other reasons, the less valuable to consumers is the assurance that decoder standards will remain fixed.

25. In general terms, the potential costs to consumers of an encryption standard are the discouragement of innovations in encryption technology and the possible delay in adoption of those improvements that are made. It is also possible that the administrative process is not well-suited to picking the best standard. In other words, the Commission might not pick the optimal standard, with attendant costs to consumers. Additionally, we note that, in the case at hand, if the Commission were to set a standard other than the VC II, existing VC II equipment would likely be made obsolete. We seek comments on these possibilities.

26. We do not see encryption standards as immutable. Even if the Commission were to establish an encryption standard, we would have to allow for the possibility that it might be altered or revised. Moreover, if the incentives,

outlined *supra* at para 10, for manufacturers and programmers to provide a smooth transition were, in fact, strong, then the value of a standard as obsolescence insurance would be diminished. We believe that some insight into the operation of these incentives can be gained by examining the pending introduction of the VC II Plus.

27. The VC II Plus is best described as a new generation of VC II. The basic encryption technology is the same, but the VC II Plus has some new features not available on the VC II. For questions of obsolescence and of compatibility between the two generations, the key factor is the different number of tier bits (*supra* para 16). The VC II has 56, while the VC II Plus has those 56 plus an additional 200. The two generations are compatible in the sense that programming authorized via the original 56 tier bits is available to users of both the VC II and the VC II Plus. Programming authorized via the additional 200 tier bits is available only to users of the VC II Plus.

28. GIC points out that the new tier bits, along with the other new features of the VC II Plus, represent enhancements, additional capabilities and value provided to VC II Plus owners. However, the situation is complicated by the fact that the installed base of VC II decoders has proven so vulnerable to piracy. GIC hopes that the VLSI chip used in the VC II Plus, and other features, will make it far less susceptible to piracy.[33] If this hope is realized, programmers might find it attractive to move their services from "old" tier bits to "new" ones, in order to stop the theft of their services. This would be an expensive procedure, however, since programmers would lose access to the installed base of almost 500.000 legally authorized VC II decoders, a base that contains the customers who made early commitments to their services.[34]

29. On the other hand, it is our understanding that the VC II decoder can be retrofitted by insertion of a new module to give it the capabilities of the VC II Plus. GIC has not yet addressed publicly the question of how, at what price, and to whom (*e.g.*, to manufacturers, to programmers, to retailers, direct to consumers, or some combination of those options) such modules would be supplied. Nor is information available on the cost of such retrofitting. GIC has recently indicated that it "has absolutely no intention of allowing existing subscription services to transfer to tier bits above today's Tier Bit 56."[35] However, GIC officials have left open the possibility that programmers may be able to use an "old" and a "new" tier bit at the same time, and it seems reasonable to assume that eventually the "new" tier bits will be made available to new programmers.[36]

30. GIC officials have also indicated that, if the VC II Plus is not compromised, they would like to see the VC II units eventually replaced by VC II Plus units. This could be accomplished by ECM, repairing broken legitimate VC II's by exchanging the module for a VC II Plus, and the voluntary replacement by legitimate consumers of old or otherwise unsatisfactory satellite receivers.[37] These measures could reduce the pool of actual or potential pirate decoders in circulation. If this pool becomes small, then programmers would reap no benefits from switching to "new" tier bits.

31. We seek comment on the introduction of the VC II Plus from all segments of the HSD market. We are interested in the plans of GIC with respect to use of the new tier bits, access to which it controls. We are interested in the demand for new tier bits by programmers, old and new. We are interested in the cost and procedures for retrofitting VC II's. We also request comment on who will likely finance the conversion process and whether there is any basis for government intervention to determine the responsibility for financing it. Broadly speaking, we seek comment on the implications of the transition from VC II to VC II Plus for the question of whether a mandated standard would serve the public interest.

B. *Incorporation of Technical Enhancements, Including Advanced Television Formats*

32. We have already suggested that a government-mandated encryption standard may blunt the incentives for innovation and slow the adoption of technical enhancements, due to the need for an administrative proceeding to revise an existing standard. Such a proceeding takes time and provides the opportunity for any private interests that might be disadvantaged by new developments (*e.g.*, producers of equipment that might be replaced or rendered inferior by such advances) to delay their adoption. We reiterate our interest in comments evaluating this analysis of the effects of mandated standards on innovation incentives.

33. With respect to advanced television formats (ATV) in particular, the Commission is in the process of considering technical standards for that service.[38] There is, at present, no consensus on ATV technical standards, but it appears unlikely that the VC II would be compatible with the possibilities under discussion.[39] In fact, any encryption standard chosen prior to the adoption of ATV standards runs the risks of being incompatible with those standards or skewing the choice of ATV standards in the direction of compatibility with the encryption standard.[40] We seek comment on these matters.

34. The pending development of ATV may, as suggested in the previous paragraph, militate against adoption of encryption standards. Alternatively, it may simply imply that a standard should not be adopted *now*. If a standard were adopted now and an incompatible ATV standard were adopted later on, there might be strong pressure to revise the encryption standard. If one expects ATV to be with us relatively soon, then encryption standards adopted now could be short-lived. Therefore, if ATV is viewed as the type of technical change that occurs infrequently, it might be prudent to delay setting encryption standards until ATV standards have been set. If, on the other hand, ATV is viewed as one in a continuing stream of technical advances, then the adoption of ATV standards would be less relevant to a determination of when or whether encryption standards would be in the public interest. We seek comment on these issues.

C. *The Effect of a Standard on Present and Future Unauthorized Decryption of Satellite Cable Programming*

35. Unauthorized decryption of satellite cable programming, known colloquially in the HSD industry as "piracy," is, in essence, theft of satellite program services.[41] In order to assess the effect of a standard on piracy, it is helpful to consider the factors that influence a consumer's choice between legitimate program subscriptions and piracy.

36. We surmise that the incidence of piracy is a function of the following factors--the price of decoders, the price of programming, the civil and criminal penalties for piracy, the probability of getting caught, dish owner attitudes toward violating the law against theft of satellite

services, and the demand for American satellite cable programming by foreigners in areas surrounding the United States (such as Canada, Mexico, and the Caribbean). The price of authorized access to encrypted satellite cable programming depends on the price of decoders and program service subscriptions. We would expect the incidence of piracy to be positively related to the price of authorized access. The incidence of piracy is negatively related to the severity of the legal penalties against it and the probability of getting caught. Dish owner attitudes about the fairness of the legal restrictions on reception of satellite transmissions doubtless play a role as well, but we have no way of quantifying it.

37. Foreign demand is listed as a separate factor because in most cases foreigners cannot subscribe to American satellite cable services because those services do not have foreign exhibition rights for their programming.[42] However, the satellite feeds of American programmers are receivable in substantial areas outside the United States. People in those areas face a programming subscription "price" that is infinite (*i.e.*, they cannot subscribe at *any* price). Without the option of a legal subscription, there are incentives for piracy.

38. With this framework as a background, we seek comment on how adoption of a standard would affect consumer demand for pirate decoders. On initial consideration, the only possible effect that we see is if the standard were to lead to reduced decoder prices. In this event, a standard might reduce piracy. We seek comment on this scenario and on any other mechanisms by which a standard might affect the incidence of piracy.[43]

39. In Congressional testimony, GIC has suggested that a standard might actually hamper the struggle against piracy.[44] GIC raises the possibility that the administrative process of adopting a standard might lead to the public dissemination of sensitive specifications for the security function of the encryption system. In addition, GIC suggests that a standard might inhibit its ability to implement ECM against suspected pirates. Presumably these problems would face the producers of any encryption system, not just GIC. We seek comment on these issues.

40. In order to assess the potential impact of a standard on piracy, we believe that it is important to examine the private incentives to combat it. Having done so, it will then be possible to isolate the incremental effect of standards on anti-piracy efforts. It seems clear that programmers have strong incentives to act against piracy and/or to exert pressure on the manufacturer(s) of encryption equipment to do so.[45] They receive no payment at all from pirates. Hence, turning pirates into regular subscribers represents a significant source of potential revenue for programmers. If the owners of each of the approximately 500,000 pirate decoders in use instead subscribed to $20 per month of programming (a relatively modest amount), the annual gross revenues would be $120 million.

41. While GIC's situation is slightly less straightforward, we believe that it too has strong incentives to combat piracy. Because of their strong interest in preventing piracy, programmers will not continue to use a compromised system indefinitely. Nor will they be likely to select a replacement system from a provider whose previous effort was unsuccessful. Hence, GIC (or any provider of encryption equipment) would stand to lose substantial revenues in the long run if its encryption system were not secured against piracy.

42. Because current techniques of VC II piracy all require a legitimate VC II decoder, GIC receives revenue from sales of decoders to pirates as well as legitimate users. Thus, in the short run, it could be said that GIC "profits" from piracy. However, we believe that the long run costs to GIC of piracy far outweigh any short term revenues it might gain from sales of decoders to pirates. Hence, we believe that GIC has strong incentives to combat piracy (as would another holder of patents for encryption equipment).

43. Moreover, even in the short run, the magnitude of the effect of piracy on GIC profits is not clear. To calculate it, one would first need to know how many owners of pirate decoders would have purchased a decoder anyway if they had been secure from tampering. While many such owners would not have purchased a decoder in this event, some would have, although perhaps at a later date than they did in the presence of piracy. Next, one would need to know, for those who would not have purchased a decoder in the absence of piracy, how many bought standalone units and how many bought IRDs. Standalone units are made only by GIC, while many IRDs are made by other manufacturers using modules purchased from GIC or Channel Master. The wholesale price of a module is roughly half that of a standalone decoder, and the profit margins on the two are likely to differ.[46] The final step in the process of calculating GIC's short run "profit" from piracy would be to subtract the money it spent on anti-piracy activities from its net revenues on pirate decoder sales.

44. We invite comment on our analysis of the incentives that GIC and the programmers have to combat piracy. We are also interested in comment on whether there is any reason to believe that GIC would behave differently than any other manufacturer in a similar position (*i.e.*, as holder of patents covering an encryption system voluntarily adopted by a wide range of satellite cable programmers. As noted *supra* at para 19, some proponents of a standard appear to assume that it would be accompanied by regulation of the licensing and royalty practices of patent holders. We invite any commenters making that assumption to comment on how such regulation would affect the incentives of equipment manufacturers to combat piracy. In addition, we invite comments on the incentives of other parties, such as distributors, to combat piracy, and the effect, if any, of a standard on their incentives.

45. In addition to the matters discussed *supra*, we also seek more specific comment on VC II piracy. We believe that the industry's experience with the compromise of the VC II can provide useful lessons for the future regarding piracy and standards. As a preliminary matter, we seek information on the state of VC II piracy today. What is the incidence of piracy now? Has the most recent VC II software and/or hardware been compromised? We also seek information regarding how the VC was compromised. In what ways would a standard protect against the techniques used to compromise the VC II? Would a standard be more likely than private efforts to protect against design errors that might lead to the compromise of an encryption system?

46. We also invite commenters to submit information regarding the identity of those who have compromised the VC II. Because the primary responsibility for enforcement of federal laws against theft of satellite program services

lies with the U.S. Department of Justice, we anticipate forwarding any information received on this subject to federal law enforcement authorities.[47]

47. Ultimately, the legitimate consumer pays for piracy, whether it be through higher prices for decoders and programming or, in the extreme, through the loss of access to satellite-delivered programming.[48] Hence, if adoption of a government-mandated standard were to lead to a reduction in or the end of piracy, consumers would benefit. We seek comment on this aspect of the piracy-standards relationship too.

D. *Costs and Benefits of Standards to Other Authorized Users of Encrypted Satellite Cable Programming*

48. The costs and benefits of an encryption standard to commercial authorized users of satellite cable programming are similar but not identical to those faced by consumers. Other than consumers, cable systems are the major authorized users of encrypted satellite cable programming. Additional users include satellite master antenna television (SMATV) systems and multichannel multipoint distribution service (MMDS). We seek comment on what if any other categories of authorized users are relevant.

49. The potential benefits to consumers of a standard include relief from the necessity of purchasing multiple decoders (in the event that the market does not coalesce on a *de facto* standard) and reduced decoder prices. The former is significantly less important for the commercial users considered here than it is for consumers. Commercial users must be prepared to provide simultaneously all of the channels that they offer. Hence, they need a separate decoder for each scrambled service offered. If different programmers were to choose different encryption systems, it would have little effect on the number of decoders that commercial users would need. Nevertheless, commercial users do require backup capacity to ensure uninterrupted service in the event that a decoder malfunctions. The necessary investment in such capacity is lower if all scrambled services use the same encryption system than if multiple systems are used.

50. Other things being equal, commercial users, like consumers, prefer lower decoder prices to higher ones. If adoption of a standard were to bring lower decoder prices, commercial users would benefit. Comments on the relation between standards and decoder prices were solicited *supra* at para 38,[49] and we believe that, for this particular matter, the analysis is the same for consumers and commercial users.

51. The other potential benefits of a standard mentioned in our discussion of consumer decoders are a reduction in uncertainty regarding encryption technology and the provision of "obsolescence insurance." We believe that both are relevant to commercial users but the potential benefits to them are of lesser magnitude than those to consumers. A great deal of the uncertainty regarding encryption technology that has faced consumers stems from the fact that different programmers adopted encryption systems at different times. The consumer could not be sure that the decoder purchased to gain access to services scrambled early in the process would also permit access to services that scrambled later. This is a smaller problem for commercial users because, as explained *supra* at para 49, they require a separate decoder for each scrambled service carried. Hence, purchasing a decoder for a service that scrambles early does not significantly raise the price faced by commercial users to gain access to services that scramble their signals later.

52. Moreover, the choice facing a commercial user when a service that it carries scrambles its signal is clear-cut—either acquire a decoder or drop the service. These users generally cannot wait to see what happens with other services. On the other hand, consumers generally have some other services available, either unencrypted satellite services or services delivered by other media. Hence, the possibility of deferring a decision is open to them in a way that it is not open to commercial users.

53. Commercial users are, like consumers, concerned about obsolescence of their equipment. However, it appears that commercial users can amortize their decryption equipment more rapidly than consumers. Commercial VC II decoders are more expensive than consumer units, but the price difference is not substantial.[50] (We are interested in verifying the current price differential between consumer and commercial units.) Moreover, programmers sometimes defray part of the cost of the decoders acquired by their affiliates. Even though commercial users require one decoder per encrypted service carried, since the total number of encrypted services numbers only in the dozens, all but the smallest commercial users are likely to have a large number of subscribers per scrambled signal carried. Hence, the burden of replacing or retrofitting decoders to accommodate a change in encryption systems appears smaller for commercial users than for consumers.

54. These considerations suggest that the benefits of a standard might be lower for commercial users than for consumers. There is, however, one potential benefit that affects commercial users only. Because theft of satellite services is relatively easy to accomplish, it may skew the choice of households between, for example, cable and HSD delivery systems.[51] If it is true that adoption of a standard would reduce theft of satellite services (*see supra* at paras 36-38), then commercial users might benefit from additional subscribers. Some who might have chosen HSD distribution in an "easy piracy" environment might opt for cable.

55. The analysis of costs of a standard to commercial users appears identical to that for consumers. Commercial users stand to benefit from innovations that reduce cost and/or increase the quality and capabilities of encryption equipment. To the extent that a standard would discourage investment in product development and slow the adoption of those new features that are developed, commercial users would be disadvantaged by a standard. We seek comment on this entire analysis of costs and benefits of a standard to commercial users. If there are any cost/benefit considerations that we have overlooked, we urge commenters to bring them to our attention. In their discussions of costs and benefits, we encourage commenters to point out the similarities and differences between the situations of consumers and commercial users.

E. *The Effect of A Standard on Competition in the Manufacture of Decryption Equipment*

56. The VC II system is protected by patents held by GIC. Manufacturers of decryption equipment require a license from that company. At first glance, it appears that this situation would be unchanged if the Commission were to establish the VC II as a mandated encryption standard. Hence, we do not believe that establishment of a

standard *per se* would necessarily affect the level of competition in the manufacture of decryption equipment. If establishment of a standard were accompanied by a requirement for compulsory licensing of the technology at "reasonable rates," then competition (and decoder prices) might be affected. As a preliminary matter, then, we urge commenters on this issue to specify clearly their assumptions regarding what, if any, licensing and royalty regulations would accompany adoption of a standard and to address the question of our authority to impose licensing and royalty regulations. In this connection, we note that patents are, in effect, legal "temporary monopolies" granted to provide incentives for investment in the development of new technology. Patent holders are generally not obligated to license patents and are legally entitled to set royalties for any users they do choose to license.

57. The VC II is not, of course, the only possible encryption system. If a system were chosen that depends on patents held by more than one firm, then, even without regulation of licensing practices, the outcome might differ from the case in which one firm controls all the key patents for the system. We seek comment on the impact of a standard on competition in manufacturing and on the price of decryption equipment in the event that one firm holds the patents on the encryption system (*e.g.*, GIC and the VC II) *and* in the event that two or more firms own relevant patents.

58. In order to provide context for the analysis of this issue, we believe that it would be useful to summarize the current state of competition in encryption equipment manufacturing. There are currently two types of consumer decoder--the standalone unit and the IRD. GIC is the sole manufacturer of standalone decoders. The decoding capability is contained in a plug-in module. GIC has licensed one firm, Channel Master, to manufacture VC II modules and roughly two dozen firms to manufacture IRDs. The IRD licensees purchase modules from GIC or from Channel Master. The VC II module contains certain proprietary chips (components). Channel Master purchases these chips from GIC. We seek comment on the accuracy of this description.

59. At present, then, there is no competition in the manufacturing of standalone decoders. However, it should be noted that the standalone decoder is widely considered to be a transitional product.[52] Ultimately, most if not all consumers will acquire decoding capacity by purchasing an IRD. We requested comment *supra* at para 24, note 32 on the shares of decoder sales accounted for by standalone decoders and IRDs. There is also no competition in the supply of the proprietary chips needed to manufacture the VC II module. All must be acquired, directly or indirectly, from GIC. (Of course, GIC may have contracted with more than one supplier to manufacture these chips.) There is competition between GIC and Channel Master in the fabrication of modules and, indeed, it appears that in some instances Channel Master has offered lower module prices to IRD manufacturers than GIC has.[53] The scope and significance of this competition depends on the value added by Channel Master in module production. The scope for competition is greater as the value added is greater. That is, if the price to Channel Master of the proprietary chips is a *small* fraction of the total module cost, the scope for competition is greater.

60. There is competition among the two dozen or so IRD manufacturers on all satellite receiver features except for decoding capacity. IRD manufacturers all must purchase identical VC II modules. There is limited scope for competition with respect to the manufacturing process of inserting the modules. It is possible that some manufacturers are more efficient than others at doing this and could gain some minor price advantage from it.

61. In addition to comments on the accuracy of our depiction of the current situation, we request information on expected future developments. If the standalone decoder is a transitional product, how long will demand for it continue? Does GIC have plans to alter its licensing practices due to the introduction of the VC II Plus system or for any other reason?

F. *The Impact of the Time Delay Associated with Commission Procedures Necessary to Establish a Standard*

62. Under this heading, we seek comment on two questions. First, if the Commission were to decide to establish an encryption standard, how long would it take to complete the process. Second, what would be happen to the HSD programming market during that process. On the first matter, GIC has asserted that the time period would be a "minimum of two years, if there are no court appeals."[54] The Commission has been involved in a wide variety of standard setting proceedings on which commenters could draw to formulate their own estimates of the relevant time period. Several of them are analyzed in a Rand Corporation study by Besen and Johnson.[55] In the case of television stereo sound, the Commission decision process took less than one year. In this instance, the Commission did not actually set a standard but chose to protect from interference only systems that conform to specifications recommended by an industry committee.[56] In the case of AM stereo, the Commission ended up deciding against a government-mandated standard in a proceeding that took roughly five years.[57] The Commission is currently in the midst of a proceeding examining ATV issues, including the question of standards.[58]

63. If the Commission were to begin a proceeding to establish an encryption standard for satellite cable programming, it is likely that sales of decoders and HSD systems would be adversely affected. Consumers would be more reluctant to purchase decoders in the face of a real possibility that they would be made obsolete by the promulgation of a new standard. However, some might gamble that the VC II would be chosen, or alternatively, that the standard setting process might take such a long time that a VC II decoder could be amortized by the time any new standard went into effect. To the extent that decoder sales are depressed during the proceeding, it is likely that the demand for HSD systems would drop as well. Without access to the wide array of scrambled programming, the value of an HSD system to consumers is substantially reduced.

64. We believe that those programmers who have already invested in VC II equipment would continue to scramble their signals. The installed base of roughly 500,000 legal decoders represents a significant source of revenue to programmers. It is possible that some programmers who have not yet scrambled their signals might decide to do so during this period. Their decisions would be based on a comparison of the revenue to be gained from HSD subscriptions (and, perhaps, revenue from new commercial affiliates that had previously been using their service without payment) with the cost in terms of the encryption equipment that the programmer would need to purchase. (There is also the issue of whether the ser-

vice's cable affiliates value it enough to purchase VC II decoders and the extent to which the programmer might find it necessary to subsidize these purchases.)

65. Responses to the question of HSD market behavior during the pendency of a Commission standard-setting proceeding necessarily involve an element of speculation. For that reason, it is particularly important for commenters to make explicit their assumptions about that market, about the structure of a Commission proceeding to set encryption standards, and about any other parameters they deem relevant.

IV. CONCLUSIONS AND ADMINISTRATIVE MATTERS

66. The Commission's Congressional instructions regarding this proceeding are fairly detailed, identifying six factors for us to take into account as we consider whether a government-mandated encryption standard for satellite cable programming would serve the public interest. In this Notice, we have presented a preliminary discussion of those factors in order to provide a basis for the more comprehensive analyses that we hope to receive in the comments. We do not claim that our discussion of the six factors is exhaustive. Commenters are encouraged to expand upon it in any way that they believe relevant. Likewise, if there are topics beyond the six listed in our statutory instructions that are germane, we encourage comment on them as well.

67. This Notice is issued pursuant to authority contained in Sections 4(i), 303(r), 403, and 705(f) of the Communications Act of 1934, as amended. 47 U.S.C. 154(i), 303(r), 403, and 605(f). Under the applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **June 5, 1989** and reply comments on or before **June 20, 1989.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C., 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

68. For further information concerning this proceeding, contact Jonathan D. Levy, Office of Plans and Policy, (202) 653-5940.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Appendix A

Before the Federal Communications Commission, Washington, D.C.
File No. Docket No.
Complainant

1____

2____
Name Occupation Mailing Address
VS.
General Instrument (Video Cypher Div.) 2200 Byberry Rd. Hatboro, PA

General Instrument has contrived to supply the encryption system for consumer decoding of television programs in a monopoly environment. GI has further manipulated supply of decoders to create shortages in order to maintain an inflated price level on decoders.

GI has designed early obsolescence of the decoder by limited program handling capability. This company has announced release of newer equipment which will make contracted receiver/decoders manufactured by competitive companies incapable of utilizing the new system.

General Instrument has failed to exercise sufficient control and enforcement measures to prohibit or halt signal piracy and has, indeed, profited grossly by this illegal activity.

GI, in their haste to prevent a mass exodus from cable dependency to direct satellite reception, has failed to fulfill the market need for an efficient and desirable industry standard system to the extent that programmers are using at least five other encryption systems to ensure security of their product, thus placing a financial and convenience burden on the American Consumer.

Relief Desired:

That the FCC undertake an immediate in-depth investigation of the excryption portion of the satellite television industry to determaine the status of and resolution for the following:

Video Cypher Division personnel testified before both Houses of Congress that VCII was unbreakable. It is broken. FCC must now determine who broke it, why, how and if indeed there is any connection between those parties and the manufacturer who had enjoyed the profits therefrom.

Provisions must be established to terminate the continued profiteering from piracy. The monetary burden of this endeavor should not be borne by the American taxpayer as it is a private enterprise problem.

The FCC should establish a standard to which multiple manufacturers can build. These standards should not only ensure protection of program suppliers but must also ensure protection of the consumer investment in decoding equipment.

Date at Time:__________ this__________ day of ______________ 1988

I declare under penalty of perjury that I am the complainant in the above entitled matter, that I have read the foregoing complaint; and that the matter and things therein are true and correct, to the best of my knowledge and belief.

Signature__________________

Signature__________________

FOOTNOTES

[1] Pub. L. No. 100-667, 102 Stat. 3949, 3958-59 (1988). In addition to the present inquiry, the Commission is directed to initiate a combined inquiry and Rule Making proceeding to determine the feasibility of applying syndicated exclusivity rules to syndicated programming on broadcast stations retransmitted by satellite to HSD households. The Act also mandates an inquiry into possible discrimination by satellite carriers of broadcast signals (of superstations or network stations) retransmitted to HSD households by satellite against certain distributors of those signals. These inquiries will be initiated separately.

[2] *Id.* These provisions will be codified at 47 U.S.C. 605(f) and (g). The Commission is required to initiate this particular inquiry within six months after the date of enactment of the statute, which was November 16, 1988. *See also Satellite Home Viewers Act of 1988*. H. Rep. No. 100-887, Part 2, 100th Cong., 2d Sess. (*House Report*) at 27-28.

[3] *See Report* in Gen. Docket No. 86-336, 2 FCC Rcd. 1669 (1987) (*Report*) and *Second Report* in Gen. Docket No. 86-336, 3 FCC Rcd. 1202 (1988) (*Second Report*).

[4] *See Second Report*, *supra* note 3, at paras 16-17 and *Report*, *supra* note 3, at paras 39-52.

[5] Satellite Home Viewer Act of 1988, *supra* note 1 at 3958-59. These provisions will be codified at 47 U.S.C. 605(f).

[6] Pub. L. No. 98-549, 98 Stat. 2780 (1984). The general prohibition is codified at 47 U.S.C. 605(a). The provisions regarding satellite cable programming are codified at 47 U.S.C. 605(b) and (c).

[7] 47 U.S.C. 605(c)(1).

[8] The background material in these paragraphs is drawn from the more extensive discussion in the *Report*, *supra* note 3, at table 1 and paras 29-30. *See also Second Report*, *supra* note 3, at table 1.

[9] Cinemax, also owned by HBO, scrambled its satellite feeds at the same time. A few pay per view services, with much more limited subscribership than HBO, had scrambled their signals with the VC II in late 1985. *Report*, *supra* note 3, at table 1.

[10] Comments of General Instrument Corporation in Gen. Docket No. 86-336 (*GIC Comments*) at 4 (filed Oct. 20, 1986).

[11] The investigation was conducted in cooperation with the National Telecommunications and Information Administration. *See Notice of Inquiry* in Gen. Docket No. 86-336, 104 FCC 2d 1444 (1986).

[12] *See supra* note 3. Pursuant to Commission instructions in the *Report*, Commission staff monitored the HSD market and produced three three-month progress reports on that market prior to the adoption of the *Second Report*. Since then, pursuant to Commission instructions, the staff has been monitoring the HSD market on an informal basis.

[13] *See Second Report*, *supra* note 3, at paras 16-17 and *Report*, *supra* note 3, at paras 39-52.

[14] In our earlier inquiry, proponents of a mandated standard argued that it was needed to ensure that consumers need purchase only one decoder and to hold decoder prices down. *See Report*, *supra* note 3, at paras 39-46. The relation between a standard and decoder prices is analyzed *infra* at paras 56-61.

[15] *Second Report*, *supra* note 3, at para 17.

[16] *Id.*

[17] *Second Report*, *supra* note 3, at paras 24, 79.

[18] Satellite Home Viewer Act of 1988, *supra* note 1, at 3959-60.

[19] *Communications Daily*, Nov. 22, 1988, p. 7.

[20] *Satellite Business News*, Feb. 8, 1989, p. 13.

[21] *Satellite Business News*, Jan. 11, 1989, p. 1. VC II modules are used by GIC and other manufacturers licensed by GIC to produce integrated receiver decoders (IRDs). An IRD is a satellite receiver (*i.e.*, a component of an HSD system) with built-in decoding capacity. GIC also produces standalone decoders. This total does not include all of the shipments by Channel Master, GIC's second source module licensee, but it appears that the excluded shipments are a small portion of the cumulative total reported.

[22] *Satellite Retailer*, February 1989, p. 10.

[23] *See Second Report*, *supra* note 3, at paras 24-33.

[24] *Satellite Business News*, Feb. 22, 1989, p. 13. GIC states that it offers compensation to victims of mistaken deauthorization, in the form of free programming or payment of shipping costs for decoders sent to GIC in response to mistaken deauthorization. *Id.*, Dec. 28, 1988, p. 13. Pirate decoders disabled by ECM can, in many cases, be restored to working order by purchasing additional pirate chips and/or software.

[25] The first improvement, new software referred to as "Dash 7," was introduced in late 1988. The second improvement, known as "chip-on-board," was introduced in early 1989. It involves a new configuration of circuitry in the VC II module. *Id.*, Dec. 28, 1988, p. 1, 13.

[26] *See Inside TVRO* (a GIC newsletter for satellite equipment dealers) Nov. 1988, p. 1, 2, 6.

[27] *Id.*

[28] Issues relating to the compatibility of the VC II and the VC II Plus, and to the transition from VC II to VC II Plus are considered *infra* at paras 27-31.

[29] These complaints were received prior to the initiation of the present inquiry. They were placed in the file of Gen. Docket No. 86-336 (the Commission's earlier HSD inquiry). These complaints, and others regarding encryption standards issues received after adoption of the *Second Report*, *supra* note 3, on February 25, 1988, are incorporated by reference into the record in this proceeding.

[30] Two other, less persuasive arguments were made by proponents of the proposition that a standard would lower decoder prices. It was asserted that a standard would rule out the possibility of multistandard decoders, which were claimed to be more expensive than single standard ones and it was asserted that the VC II had some unnecessary or duplicative features. *See Report*, *supra* note 3, at paras 39-45.

[31] In our earlier inquiry, we determined that the marketplace *had* adopted the VC II as a *de facto* standard. This determination, plus the conclusion that government-mandated standards would limit the incentives of manufacturers to develop improved encryption technology, led to our previous decision not to adopt mandatory encryption standards. *See supra* note 13. The effect of standards on innovation incentives is discussed *supra* at para 9 and *infra* at para 32.

[32] We seek information on the IRD share and its trend. Comments in our earlier inquiry suggested that the standalone decoder was a transitional product. *See Report*, *supra* note 3, at para 36.

[33] Our impression is that no one in the industry now believes that a consumer decoder can be built that is totally secure in the technical sense. It appears that the industry's hope now is for a decoder that is difficult and expensive to compromise, one that would, in effect, take the profit out of piracy. That, plus public relations and law enforcement efforts, in the view of the industry, will bring piracy under control, even if it is not eliminated entirely. *See Second Report*, *supra* note 3, at paras 29-31.

[34] Since every HSD household does not subscribe to every service, no programmer would be actually giving up 500,000 subscribers.

[35] *Broadcasting*, Dec. 5, 1988, p. 65.

[36] *Satellite Business News*, Dec. 28, 1988, p. 1, 13.

[37] *Id.*, p. 13.

[38] *See Tentative Decision and Further Notice of Inquiry* in MM Docket No. 87-268, 3 FCC Rcd. 6520 (1988).

[39] *See* Hearing on "H.R. 1885, the 'Satellite Television Fair Marketing Act'" Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 100th Cong., 2d Sess. (June 15, 1988). Prepared Statement of J. Lawrence Dunham, General Instrument Corporation (*Dunham Statement*) at 40-42.

[40] There are major technical and policy issues regarding availability of broadcast spectrum for ATV that have yet to be solved. *See Tentative Decision and Further Notice of Inquiry, supra* note 38. Spectrum for satellite transmissions is relatively abundant. Cable also has available the bandwidth needed for ATV.

[41] *See* paras 11-13 *supra*.

[42] *Dunham Statement, supra note* 39, at 29.

[43] We discuss the possible relation between standards and decoder prices in more detail *infra* at paras 56-61.

[44] *Dunham Statement, supra* note 39, at 38-40.

[45] In addition to being the primary manufacturer of VC II equipment, GIC also manages the center that handles authorization of subscribers to decrypt programming. *See Report, supra* note 3, at note 169.

[46] For these calculations to be completely accurate, it would also be necessary to know the breakdown of IRDs between those made by GIC and other manufacturers and the breakdown of modules used in IRDs between those manufactured by GIC and those manufactured by Channel Master.

[47] The complaint reproduced in Appendix A hints obliquely that GIC may be connected in some way to those who have compromised the VC II. The complaint contains no evidence that might corroborate such a connection, and we know of no evidence that would do so either. If any evidence or information on this matter is available, we urge commenters to submit it.

[48] Certain high value one-time pay per view events have been withheld from the dish market due to security concerns. *See, e.g.*, *Satellite Business News*, Jan. 11, 1989, p. 4. *See also Id.*, Dec. 28, 1988, p. 4.

[49] *See* also paras 56-61 *infra*.

[50] We understand that the suggested retail price of a standalone consumer VC II unit is $395. The initial price for commercial units was "about $450." *See GIC Comments, supra* note 10, at 32.

[51] We realize that not all homes are passed by cable and that theft of services from cable operators is also possible. These factors mitigate the effect under discussion here.

[52] *Report, supra* note 3, at para 36. *Second Report, supra* note 3, at para 23.

[53] *Second Report, supra* note 3, at para 23.

[54] *Dunham Statement, supra* note 39, at 38.

[55] S. M. Besen and L. L. Johnson, *Compatibility Standards, Competition, and Innovation in the Broadcasting Industry* (Rand Corporation, 1986).

[56] *Id.*, at 61-71. The Commission decision process took place during 1983 and 1984. However, television stereo had been discussed in some earlier Commission decisions and had been addressed in petitions to the Commission prior to 1983. Hence, in this case, as in others, there is a certain amount of ambiguity in choosing the date on which Commission involvement in the process of deliberating on standards began. The involvement of the industry committee (the Broadcast Television Systems Committee of the Electronic Industries Association) in the analysis of television stereo sound standards dates back to 1979. Id., at 62.

[57] *Id.*, at 32-60. *See esp.* 34-39.

[58] *See Tentative Decision and Further Notice of Inquiry, supra* note 38, at paras 113-122.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) DA 89-581

Inquiry into the Need for A)
Universal Encryption Standard) Gen. Docket No. 89-78
for Satellite Cable Programming)

ORDER EXTENDING DEADLINE FOR FILING COMMENTS AND REPLY COMMENTS

Adopted: May 23, 1989 Released: May 24, 1989

By the Chief, Office of Plans and Policy

1. The Commission has received a "Request for an Extension of Time for Filing Comments" in the above-captioned proceeding. General Instrument Corporation (GIC) filed this request on May 18, 1989, asking for a two-week extension.

2. As a preliminary matter, it should be noted that the published text of the Notice of Inquiry in this proceeding (released April 14, 1989, FCC 89-104) contained an erroneous reply comment deadline. An Erratum was issued on April 18, 1989. That Erratum was incorrectly captioned General Docket No. 89-79. The correct docket number is General Docket No. 89-78.

3. Good cause for an extension having been shown, IT IS ORDERED that the deadeline for comments in General Docket No. 89-78 is extended to June 19, 1989 and the deadline for reply comments is extended to July 19, 1989. The reply comment deadline is extended in order to preserve the 30-day period originally allocated for review of comments in this proceeding by interested parties. The additional time for filing comments is granted on the basis that it will enhance the ability of commenters in general, and GIC in particular, to submit pleadings that include comprehensive analyses of the issues raised in the Commission's Notice of Inquiry in General Docket No. 89-78.

Action is taken pursuant to Section 4(i) of the Communications Act of 1934, as amended, under authority delegated to the Chief, Office of Plans and Policy by Section 0.271 of the Commission's Rules, 47 C.F.R. Section 0.271.

Federal Communications Commission

John Haring

John Haring
Chief
Office of Plans and Policy

COMPETITION IN THE CABLE INDUSTRY

Question: According to recent testimony before the Senate Judiciary Antitrust Subcommittee (April 12, 1989), only 32 of the more than 8,000 cable systems in place in the U.S. have any direct competition. Do you dispute this information?

Answer: It is unclear what is meant by direct competition. If the reference is to "overbuild" situations where there are two cable systems franchised to serve the same area, then this number appears to be reasonable. However, we do not collect this information and our judgment regarding the accuracy of this figure is based on publicly available sources.

Question: Assuming this figure is correct or comparable to FCC information, what specific initiatives has the Commission undertaken to encourage the development of competition in the deregulated cable industry?

Answer: Nothing in the Commission's rules and policies nor the Cable Communications Policy Act of 1984 (Cable Act) restricts the number of franchises a local community may grant to provide cable service in its jurisdiction. Thus, any locality is free to authorize two or more cable systems that would be in direct competition with each other. As the Cable Act essentially removes the FCC from the franchising process, it is left to local governments to determine when "overbuild" franchising situations would be feasible and desirable. However, we have taken a number of actions regarding other matters that we believe will increase competition in and for the cable industry. We have initiated a proceeding to investigate the possibility of recommending to Congress an amendment to the Cable Act that would allow ownership of cable systems by local telephone companies. With respect to alternative sources of video programming, we are also taking actions to facilitate the use of home satellite dishes, have expanded the multi-point distribution (MDS) technology from a single channel to a multi-channel service, thus making it more competitive with cable service, and have encouraged the development of direct broadcast satellites (DBS). Furthermore, we note that the number of broadcast television stations licensed by the FCC continues to increase.

Question: Since the FCC prefers increased competition to regulation, is there any type of time frame for projecting when competition will increase?

Answer: Competition in the video marketplace continually increases as the number of video services, broadcast and nonbroadcast, grows. We would expect that competition will continue to grow as there is increased public demand for alternative forms of video service. The limitation of high power, high channel capacity direct broadcasting satellites would represent one significant additional form of competition. Although current direct broadcast satellite authorizations anticipate service commencing in 1990 it is possible that some additional time may be required to finish construction of and launch the satellites that have been authorized.

Question: What steps has the FCC taken to ensure that municipalities are able to negotiate fair and equitable franchise agreements with cable companies under the Cable Communications Policy Act of 1984?

Answer: The Cable Act provides procedures for the establishment of new cable franchises and the renewal of existing franchises. It also sets a framework for the types of requirements such agreements may include with respect to services, facilities and equipment provided by the cable operator. The Cable Act removes the Commission from the general franchising process and does not contemplate a specific role for the FCC regarding the resolution of disputes arising over franchise agreements. The Cable Act states that disputes arising from actions taken under the franchising provisions of the Cable Act may be brought in Federal district court or any state court of general jurisdiction.

Notwithstanding the above, the Commission retains a specific role in two aspects relating to the franchising process. First, we stand ready to resolve any disputes relating to franchise fees that involve national policy concerning cable communications. Second, the Commission has authority to establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in the franchise. Such standards may also be used by the franchising authority to evaluate the performance of the cable system during the franchise renewal process. In this regard, the Commission has a proceeding underway which is examining its cable signal quality guidelines, which were originally adopted prior to the passage of the Cable Act. We are considering what, if any, modifications might be made to these guidelines to help franchising authorities in their efforts to carry out their responsibilities under the Cable Act.

Question: Has the FCC received any feedback from municipalities on this issue?

Answer: Yes. A number of local franchising authorities and parties representing their interests (e.g., state authorities) have contacted the Mass Media Bureau to comment on the restrictions that the Cable Act places on them regarding regulation of cable systems. In particular, they feel that the provisions of the Cable Act make it very difficult for them to refuse to renew an existing franchise when they are dissatisfied with the service being provided by the cable operator. Another area of concern of local government officials is their inability to regulate basic cable service rates in most situations and their disagreement with the Commission's definition of "effective competition."

MISLEADING "INFORMERCIALS"

I realize that the FCC has limited jurisdiction with respect to stopping non-licensee producers of fraudulent or misleading "informercials," but no specific action has been taken by the FTC or FCC to stop this "informercial," despite my letters to both Commissions.

I did receive Chairman Patrick's response to my letter on this particular case, and I appreciate the limitations of the jurisdiction of the FCC, and your willingness to cooperate with the FTC on this matter.

Question: However, is it possible for the FCC and the FTC to jointly develop a set of standards or take measures to stop the broadcasting of misleading or deceptive programming such as this specific "infomercial"? For example, what does the FCC think about developing a standard disclaimer for advertisements of this type?

Answer: It certainly is possible for the Federal Communications Commission and the Federal Trade Commission to share information and coordinate their respective efforts in such matters. The question of joint standards or joint measures, however, is problematical given the differing statutory mandates and jurisdictions of the two agencies. Additionally, although the FCC can act against licensees when they fail, for instance, to provide sponsorship identification announcements with respect to such programs, it may not prevent the airing of the programs themselves as both the First Amendment and Section 326 of the Communications Act of 1934, as amended, (47 U.S.C. Section 326) prohibit the Commission from exercising any role of censorship. With respect to the development of disclaimers for this sort of advertising, the Commission currently believes that existing requirements for sponsorship identification are adequate as long as the programming in question is not otherwise unfair or deceptive. If, however, the Commission receives evidence of public confusion as to the commercial nature of programming that is in compliance with existing FCC and FTC requirements, a rulemaking proceeding looking to amend our sponsorship identification rules with respect to program length commercials, such as by requiring the identification at the beginning and end or at regular intervals, will be considered.

Question: Since the FCC must renew licenses for television stations, could the Commission possibly examine the prevalence of this type of broadcast?

Answer: We believe that our current approach of addressing this issue through the enforcement process is preferable to such utilization of the license renewal process. Currently, the statutory license period is seven years for radio stations and five years for television stations. To examine the prevalence of "infomercials" through the renewal process would require the Commission to undertake a rulemaking proceeding to revise its renewal forms; thereafter, the new forms would have to receive clearance pursuant to the Paperwork Reduction Act before they could be utilized and, even once approved, would not have to be filled out by many licensees for several years hence. Using the renewal process for this task would therefore take at least five years to get an accurate picture of the prevalence of such programming and, by the end of that five year period, data collected at the outset of the study would be stale. Accordingly, we believe that the best way to measure at least the compliance of licensees with requirements within our statutory bailiwick is through the enforcement process. While this will not provide data on the prevalence of infomercials, it does alert us to the airing of such programming and provides us with a basis upon which we can assess whether pertinent statutory and regulatory requirements are being complied with by our licensees.

AM RADIO BAND

There are two basic technologies for AM stereo, the Kahn system and Motorola. Several years ago the FCC indicated that the market would decide which standard receiver manufacturers would elect.

Question: Has the Market decided on this standard?

Answer: Currently, about 100 AM stations broadcast using the Kahn-Hazeltine stereo system, and about 525 use Motorola's "C-Quam" system. The C-Quam system has also been selected as the national standard in Australia and Canada. Major U.S. automobile manufacturers are now routinely offering C-Quam stereo in their middle and upper line automobile receivers. This data would appear to indicate that the Motorola C-Quam system is emerging as the nation's AM stereo standard.

Question: If so, what can the FCC do to make this market dictate part of its rules to eliminate confusion for broadcasters and consumers over which standard applies?

Answer: I do not believe AM broadcasters are confused about which AM system they should select. The momentum has been with Motorola for some time. I believe many AM broadcasters have not begun stereophonic transmission because they are uncertain what, if any, competitive advantage stereo has in the AM service. There may also be some broadcaster reluctance because of the potentially large cost involved in converting a mono station to stereo, regardless of the standard.

I also understand that the FCC indicated several years ago that it was going to conduct an inquiry into reducing interference in the AM band.

Question: What is the status of this proceeding?

Answer: In 1987 the Commission issued a Notice of Inquiry to explore ways of improving the AM service. Many good ideas were submitted in response to it. As a result, five different rule making proceedings relating to specific proposals to improve the AM service have been undertaken and a sixth is in the planning stages.

Question: What steps is the FCC taking to improve the technical quality of AM radio?

Answer: Of the proceedings initiated as a result of the AM Notice of Inquiry just mentioned, one is already bearing fruit. In April, the Commission adopted a new emission standard for AM stations that becomes effective in June of next year. It should reduce nighttime adjacent channel interference considerably and promote the development of higher fidelity AM receivers. Three of the other proceedings are concerned with developing improved methods of predicting AM signal propagation and interference levels. In a fourth proceeding, we are considering permitting groups of AM licensees to reconfigure their facilities jointly so as to reduce interference and improve reception quality. Finally, later this year, we propose to initiate a rulemaking investigating the suitability of current AM station signal protection ratios and service contours. We hope to have all these proceedings concluded by early 1990.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

FCC BUDGET REQUEST

Question: The FCC is requesting $109.8 million for fiscal year 1990, an increase of $10.2 million over the 1989 enacted level of $99.6 million. The budget does not assume the authorization of any new positions, but will allow you to fill 40 positions currently unfilled.

What was the budget request of the Commission to OMB?

Answer: The Federal Communications Commission's FY 1990 Budget Request to the Office of Management and Budget (OMB) totalled $111,934,000 which included funding to fill 79 full-time permanent positions or FTEs currently authorized by Congress.

Question: Employees in both the Mass Media Bureau and the Engineering section are working on the development of standards for HDTV. How many employees are involved in this area of activity? If Congress were able to provide you with additional personnel, could they be used in the development of HDTV standards? If you had additional positions, how many would be committed to this work in the Mass Media Bureau and the Engineering section?

Answer: The Commission has allocated approximately $665,000 for work in FY 1990 associated with high definition television. FCC Office of Engineering and Technology staff studies of spectrum options and HDTV feasibility already underway are likely to continue in that fiscal year, and other HDTV subjects are also likely to require study by OET. These anticipated activities and areas of work together with the record compiled thus far as a result of the Tentative Decision and Further Notice of Inquiry issued in September, 1988, and other HDTV developments will probably lead to further FCC action by the close of FY 1989 and continued FCC work on HDTV issues throughout FY 1990.

With respect to policy analysis related to the rulemaking proceeding, and related work of the FCC Advisory Committee on Advanced Television Service, the Commission plans to devote 3.8 workyears to these efforts. With respect to technical analysis, the Commission plans to devote 3.9 staff years of effort. Administrative support staff anticipated for FY 1990 includes a total of 1.2 workyears in FY 1990. In summary, the Commission plans to devote approximately 8.9 workyears of effort to high definition television in FY 1990.

We anticipate that work on this project will also continue for the next two fiscal years, FY 1991 and FY 1992. For this reason, we also anticipate a funding requirement for staff and support associated with high definition television continuing through 1992.

Question: You state in your written testimony that application backlogs are growing and the enforcement process is slackening. What services will be particularly hard hit by the FCC's inability to carry out these functions?

Answer: Application backlogs are growing and the public is facing increased delays in receiving many services. For example, processing of about 224 FM radio and 15 UHF TV station applications will be delayed at least one year. Not only will this reduce the public benefits of broadcast services, but it will decrease the gross present value of tax revenues by an estimated $44 million. Further, competing FM applications being received now, will take about four years to process if they involve a comparative hearing. In early FY 1988, the average time frame was one year to 18 months.

In common carrier, land mobile services (paging, two-way) are requiring between 175 and 200 days to process. This is up to 60% slower than in FY 1988. We have recently begun processing rural cellular telephone applications and have granted over 28 construction permits since the first lottery was held in July of 1988. About 804 still need to be granted. We expect the last lottery will be held in December, 1989, and all grants completed by July, 1991, at current staffing levels. Processing for this service has been slowed down some due to staff shortages and the magnitude of filings (185,000 so far this year versus 112,000 for all of last year).

In private radio, we are experiencing processing delays in 12 of 15 services. For example, the average processing time for the special mobile radio service (800 & 900 MHz) has increased 18 days from 22 in early FY 1988 to 40 days. In the public safety services, we are expecting an additional 10 day delay in granting licenses.

Enforcement efforts are also deteriorating. There is a backlog of 300 broadcast (radio and TV) station EEO cases which will take at least three years to complete at current staffing levels. The backlog is expected to grow further. In common carrier, the time to process informal complaints has increased 140% from 55 days in FY 1988 to about 130 days. The backlog has almost tripled to 4,000. Formal complaint average processing time has increased 37% from 65 to 89 days during the same time frame. The backlog is up 50% over last year and is at an all-time high of 259 cases.

The Commission's equipment importation enforcement program has been curtailed increasing the amount of interference-producing equipment entering the U.S. market. Domestic manufacturers who comply with emission standards face a competitive disadvantage. Last year, 326 citations or warnings involving over 7 million pieces of equipment were issued and generated about $155,000 in forfeitures. This year no citations have been issued.

Enforcement of marketing rules for video descramblers, CB amplifiers, computer devices, etc., have been curtailed about two-thirds (700 cases). Violations of these rules generate interference complaints and provide an unfair competitive advantage to manufacturers who do not comply. An estimated $600,000 of monetary forfeitures have not been assessed. Other investigations of non-safety interference complaints have also been reduced, such as in the land mobile business service.

CONCLUSION OF HEARINGS

Senator HOLLINGS. This completes the hearings on the Commerce, Justice, and State appropriations bill for fiscal year 1990. We will stand in recess until the call of the Chair. Thank you very much.

[Whereupon, at 10:35 a.m., Thursday, May 18, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

U.S. INFORMATION AGENCY

ADDITIONAL STATEMENTS FROM DEPUTY DIRECTOR, USIA

[CLERK'S NOTE.—Subsequent to the printing of part 1 of the hearings, the subcommittee received letters from Marvin Stone, the Deputy Director of the U.S. Information Agency. The letters contain additional statements with regard to closing USIA's post at the Vatican and the residual use of the U.S. pavilion at the Seveille 1992 World Expo.

By direction of the chairman, the letters have been printed in the hearing record.]

[The letters follow:]

LETTERS FROM MARVIN L. STONE

VATICAN USIA POST

MAY 19, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies.

DEAR MR. CHAIRMAN: After I testified on behalf of USIA before your Subcommittee Hearings on April 11, the Agency submitted for the record a statement I would like to clarify and correct, with your permission.

The statement had to do with the possible closing of additional USIA posts in fiscal 1990 and left what I consider an unfortunate and possibly misleading impression by lumping together USIS operations at our Embassy at the Vatican and two branch operations, one in New Zealand and the other in Thailand.

When he learned of the possibility that the Vatican USIA post might be closed, our new Director, Bruce Gelb, directed that any consideration of closing the post be put on hold, and indicated that there would be no such action in the foreseeable future.

What I want specifically to correct in the record is what I have come to consider the unfortunate lumping of the USIS post at the Vatican, which is an Embassy post, with two branch posts. I have recently visited the Embassy at the Vatican and have come to appreciate its importance as a major information gathering establishment for our government, an observation post of unique value. I also regard the USIS post as necessarily organic to the Embassy.

The statement submitted under my name should not have linked USIS Vatican with the two branch posts, thus inadvertently putting all three in the same class of merit. A misjudgment was made and I would like to correct the impression (and the record) with this letter.

Sincerely,

MARVIN L. STONE,
Deputy Director.

SEVILLE 1992 WORLD EXPO

JUNE 28, 1989.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Committee on Appropriations, United States Senate.

DEAR MR. CHAIRMAN: When I testified earlier this spring on the USIA budget, in my role as Acting Director, I heard some concern expressed as to the sense of having to build a pavilion at the Seville 1992 World Expo and then having to tear it down after the fair has ended.

Inasmuch as I share this concern, I went to some lengths while in Seville recently to determine whether there could be residual use of the U.S. pavilion. I was excited at what I learned and would like to share this with you as consideration of our budget moves ahead.

First, because the Spanish Government is putting roughly one-half billion dollars into the infrastructure for the Expo grounds at Seville (bridges, roads, water, electrical relay stations, etc.) they have decided, when Expo ends, to turn it into an educational, cultural, research park, intending to preserve about one-third of the approximately 100 buildings that nations will be constructing on the site.

Second, I learned that more than a dozen American universities—perhaps twice that number—are active in the Seville area in exchange, study and research programs. For example, a consortium of American universities—the Council of International Educational Exchange Cooperative Study Center in Seville—has representatives from the universities of Colorado, Wisconsin, Minnesota, Iowa, Washington, Texas, Massachusetts, Maine, Indiana, Illinois and Georgetown University. In addition, schools such as the University of North Carolina, the State University of New York and Cornell-Michigan have agreements with the University of Seville. Another attraction in Seville is the world famous Archives of the Indies which attracts scholars from all over the United States to take advantage of the documents on the exploration of the Americas which followed Columbus' voyage to the new world.

I spoke to representatives of both the educational consortium and the University of North Carolina and found that they would be interested in pursuing the possibility of taking over the American pavilion as a cooperative center and they may be able to interest other universities as well. If the United States Government were to turn this building over to an educational consortium, the consortium would take responsibility for maintenance of the building as well as a modest payment of approximately $18 per square meter ($1.80 per square foot) per year under a forty-year lease that would be granted by the Spanish authorities.

I talked recently with Senator Terry Sanford about this and he indicated interest in the possibility and I believe he proposed to discuss this not only with the University of North Carolina but the entire North Carolina State system of universities and colleges. I am told that Ohio State University is now setting up a School of Spanish Studies and would like to establish a Chair of American Studies in Seville.

To be able to provide decent office space, classroom space and an auditorium once there is no longer a fair, strikes me as a superb idea. I thought I would pass this along as you deliberate the good sense of American presence at the 1992 Seville Fair.

Sincerely,

MARVIN L. STONE,
Deputy Director.

LIST OF WITNESSES, COMMUNICATIONS, AND PREPARED STATEMENTS

Page

Adams, Hon. Brock, U.S. Senator from Washington, questions submitted by 60, 390

Baker, James A. III, Secretary of State 1
  Prepared statement 7
Balutis, Alan P., Director, Budget, Planning and Organization, Department of Commerce 131
Braswell, Arnold W., president, Air-Conditioning & Refrigeration Institute, letter from 155
Brennan, James, Assistant Administrator, National Marine Fisheries Service, Department of Commerce 271
Brock, Jerry, Chief, Common Carrier, Federal Communications Commission 651
Brown, Mark E., Director, Office of Budget, Department of Commerce 131, 271
Bumpers, Hon. Dale, U.S. Senator from Arkansas, questions submitted by 47, 216, 288, 514, 594, 612, 635, 691
Burton, B. Kent, Assistant Secretary for Oceans and Atmosphere, Department of Commerce 271
Byrd, Hon. Robert C., U.S. Senator from West Virginia, questions submitted by 235, 411

Casper, Charles R., Director of Resource Policy, Strategic Analysis, and Legislative Planning, Department of State 1
Collamore, Thomas J., Assistant Secretary for Administration-Designate, Department of Commerce 131
Cranston, Hon. Alan, U.S. Senator from California, letter from 310
Cummins, Sally J., Attorney Adviser, Department of State 1

DeConcini, Hon. Dennis, U.S. Senator from Arizona, letter from 310
DeGeorge, Frank, Inspector General, Department of Commerce 131

Engeleiter, Susan, Administrator, Small Business Administration 581
  Prepared statement 587
Eagleburger, Lawrence S., Acting Secretary, Department of State, letters from 65, 72
English, Charles L., Adviser to the Deputy Secretary for Policy and Resources, Department of State 1
Evans, William E., Under Secretary for Oceans and Atmosphere, Department of Commerce 131, 271
  Prepared statement 274

Feldman, Roger B., State Department Comptroller, Department of State 1
Felker, Lex, Chief, Mass Media, Federal Communications Commission 651
Fowler, Hon. Wyche Jr., U.S. Senator from Georgia, letter from 180
Freedenberg, Paul, Under Secretary for Export Administration, Department of Commerce 131
Fritts, William D., Jr., Special Advisor to the Secretary, Department of Commerce 131

Gramm, Hon. Phil, U.S. Senator from Texas, questions submitted by 53

Hair, Jay D., National Wildlife Federation, letter from 269
Haller, Ralph, Chief, Private Radio, Federal Communications Commission 651
Haring, John, Chief, Plans and Policy, Federal Communications Commission 651
Hatfield, Hon. Mark O., U.S. Senator from Oregon, question submitted by 386
Helsing, Craig, Chief of Staff, Department of Commerce 131

Page

Hoggard, Kim, Senior Deputy Assistant Secretary for Public Affairs, Department of State 1
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, questions submitted by 35, 63, 73, 136, 159, 281, 341, 529, 578, 600, 633, 637, 649, 676

Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statements 272, 415

Johnson, John E., president, South Carolina Bar, letter from 527
Johnson, Mark, Deputy Assistant Secretary for Legislative Affairs, Department of State 1

Kasten, Hon. Robert W., Jr., U.S. Senator from Wisconsin, questions submitted by 56, 243, 387, 597
Keeney, Timothy R.E., General Counsel, Department of Commerce, letter from 292
Killory, Diane, General Counsel, Federal Communications Commission 651
Kincannon, C.L., Deputy Director, Bureau of the Census, Department of Commerce 131
Koch, Edward L., mayor, New York City, NY, prepared statement 67

Lamb, Robert E., Assistant Secretary for Diplomatic Security, Department of State 1
LaRue, John P., president, Philadelphia Port Corp., letter from 176
Lautenberg, Hon. Frank R., U.S. Senator from New Jersey, questions submitted by 44, 116, 399

Madigan, Peter, Principal Deputy Assistant Secretary for Legislative Affairs, Department of State 1
McCormick, Jim, Associate Managing Director for Information Management, Federal Communications Commission 651
McDermett, Marilyn, Associate Managing Director for Operations, Federal Communications Commission 651
McKie, Alan R., Deputy Managing Director, Federal Communications Commission 651
Melby, Clifford N., Director, Economic Development Division, Department of Commerce, letter from 200
Mercer, Lee, Acting Deputy Under Secretary for Technology Administration, Department of Commerce 131
Moore, Allen, Under Secretary for International Trade, Department of Commerce 131
Mosbacher, Robert A., Secretary of Commerce 131
  Prepared statement 134
Mullins, Janet G., Assistant Secretary for Legislative Affairs, Department of State 1

New England Aquarium, letter from 353

O'Connor, Sandra Day, Supreme Court Justice, Supreme Court, the Judiciary 615
  Prepared statement 629

Patrick, Dennis R., Chairman, Federal Communications Commission 651
  Prepared statement 653
Peratino, Maureen, Acting Director, Public Affairs, Federal Communications Commission 651
Peterson, Eric, Acting Deputy Under Secretary, U.S. Travel and Tourism Administration 131
Peterson, Melvin, chief scientist, Department of Commerce 271
Pitsch, Peter, chief of staff, Federal Communications Commission 651
Pyke, Thomas, Assistant Administrator, National Environmental Satellite, Data, and Information Service, Department of Commerce 271

Raether, Carl N., Legislative Management Officer, Department of State 1
Raven, Robert D., president, American Bar Association 425
  Prepared statement 496
Rudman, Hon. Warren B., U.S. Senator from New Hampshire, questions submitted by 39, 120, 142, 239, 283, 368, 516, 542, 638, 671, 707

Sasser, Hon. Jim, U.S. Senator from Tennessee, questions submitted by 235

Page
Scalia, Antonin, Justice, Supreme Court, the Judiciary 615
Simon, Hon. Paul, U.S. Senator from Illinois, letter from 148
Smegal, Thomas F., board member, Legal Services Corporation 425
  Prepared statement 478
Smith, Richard, Chief, Field Operations, Federal Communications Commission 651
Stanley, Thomas, Chief Engineer, Federal Communications Commission 651
Stevens, Hon. Ted, U.S. Senator from Alaska, questions submitted by 128, 525, 596
Stone, Marvin L., Deputy Director, U.S. Information Agency, letter from 711
Wallace, Michael B., Chairman, Legal Services Corporation 425
  Prepared statement 449
Wear, Terrance J., President, Legal Services Corporation 425
  Letters from 520, 524
  Prepared statement 462
Weiher, Rodney, Comptroller, Department of Commerce 271
Weston, Thomas G., Legislative Assistant to the Under Secretary for Management, Department of State 1
White, Byron R., Justice, the Judiciary 615
White, George M., Architect of the Capitol, prepared statement 644
Whitehurst, William O., Jr., former president, American Bar Association of the State of Texas 425
  Prepared statement 502
Wilson, Hon. Pete, U.S. Senator from California, letter from 310
Wolff, Otto, Deputy Assistant Secretary for Administration, Department of Commerce 131

SUBJECT INDEX

DEPARTMENT OF COMMERCE

Page
1989 EDA special projects 175
1992 winter olympics 207
Antidumping costs 136
Antitrust laws 153
Bureau of Export Administration 191
Census funding level 147
Census and NOAA nominations, status of 151
Charleston, WV, office 238
Coastal zone management 151
Decennial census 161
EDA abolishment 149, 174, 235
Export administration offices 239
FSX deal 142
High definition television 137
Horticultural specialties census 174
Import administration 184
International Cultural and Trade Center Commission 160
International Trade Administration 181, 238, 244
Joint ventures 143
Marine fishing license 152
Minority Business Development Agency 195
New materials center 188
NOAA program decreases 210
North Pacific cable 145, 241
Opening statement 131
Renewable energy program 180
Survey of the disabled 147
Tailored Clothing Technology Corp 152, 190
Technology centers 138
Technology issues 159, 214
Top level positions 159
Tourism promotion 206
Tourism studies 207
Trade issues 145, 177
USTTA fees 149, 205, 240
Waiting for quality 139
Weather service shortfall 152
Weather stations 209
World's Fair at Seville 208

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Advanced weather interactive processing system [AWIPS] 347
Award fees 379
Climate change 389
Climate and global change program 311, 409
Coastal ocean initiative 281
Coastal Resources Management, Office of 346
Coastal zone management 365
Colorado river flood warning system 354
Definition of GOES requirements 286
Fisheries observer program 281
Fruit frost program 309, 352

Page
Geostationary satellite contract overruns 369
Global change and NOAA's ocean research 363, 371
GOES:
  Contract overruns 283
  Management 284
  Satellites 372
Great Lakes research office 388
Hooker, L.J. development project 291, 366
Landsat operations 342, 368
Launch delay 381
Launch service contract 382
Marine fishing license fee 407
Marine mammals 349
Marine research 343
Mitchell Act hatcheries 386
Modernizing weather service 289
National coastal management program 415
National undersea research program 420
National Weather Service 365, 411, 419
NOAA:
  Commissioned Officer Training Center 355
  Fisheries management 344
  Fleet overhaul 370
  Role 345, 362
National undersea research program 309, 409
National weather service modernization plan 288
Ocean pollution 399
Opening statement 271
Oversight 385
Research office and OMB 388
Right whale research 405
Saltonstall-Kennedy 352
Sandy Hook National Marine Fisheries Lab 406
Sea grant 408
Sharing technology 287
South Carolina Coastal Council 346
Stuttgart fish farming experiment station 290
Supercomputer upgrading 387
Surveying and mapping the exclusive economic zone 421
Valdez oilspill 282, 364, 367
Weather research 346
Weather service education and training 348
Weather stations 341
Wisconsin Department of Administration 389

DEPARTMENT OF STATE

1990 economic summit 87
Arms reduction discussions 60, 63
Arrearage payments 81
Asia Foundation 96, 115
Budget justification 124
Cairo, ambassador's residence in 103
CFMS 90
Construction security 98
Consulate office building in Lahore 111
Consular operations 122
Contributions to international organizations 79
Counterterrorism research and development 75
Debt repayment 61
Diplomatic security 101, 114
Drugs and narcotics, foreign policy approach to 61
EC fur labeling proposal 128
Employee associations 89
FAA security bulletins, distribution of 73
Financial Integrity Act report 114
Financial management vacancies 92

Page
Foreign airports, security at 73
Foreign nationals 89, 115
Foreign Service Institute 123
FSX, building the 54
GAO recommendations 91
Great Lakes Fishery Commission 81
High level State Department positions 76, 85
Information management 124
International Cultural and Trade Center Commission 105
Israel diplomatic facilities 127
Issues under review 48
Leaders, influence on 47
Latin America:
    Debt burden in 52
    Foreign policy and trade with 36
Moscow Embassy 38, 54, 60, 63, 87
Namibia/Angola 94
National Foreign Affairs Training Center 104
New Beijing Embassy 126
Nonrecurring costs 121
Notification of next of kin in disasters 77
Office of Munitions Control 78
Opening statement 1
Overseas furniture procurement 109, 112
Overseas housing standards 108, 113
Panama 99
Peacekeeping 78, 93, 120
Persian Gulf, peacekeeping operation in 64, 98
Personal service contracts 90
Phone bills at overseas posts 113
PLO:
    Membership in United Nations and related organizations 56, 65
    Dealing with the 53
    PFLP-GC and Pan Am 103 116
    Views on the 42
Posts overseas 84
Principle of comparative advantage 40
Reduction in authorization 115
Refugee affairs and director of refugee programs, coordinator for 58
Refugee programs, funding, 1989-90 57
Refugee resettlement 46
Reorganization 35
Representational housing 111
Reprogrammings 123
Resettlement of emigrants 116
Sale of property 106
Savings in security and construction programs 93
Security standards 97
Sewage problem, United States/Mexico border 55
Soviet emigration 100
Special envoy 127
Staffing at overseas posts 95
Start talks, resumption of 50
State Department cost sharing 96
Soviet influences 49
Soviet Union, human rights in 49
State Department employees 91
Substance and public relations 51
Tagging plastic explosives 75
UNIFIL 80
United Nations funding 122
USIS office building in Calcutta 109
U.S. mission to the United Nations 99
World's Fair at Seville 85

Page

FEDERAL COMMUNICATIONS COMMISSION

AM radio band 706
Automation 687
British Telecom-McCaw agreement 677
Competition in the cable industry 704
Consolidation of FCC offices 688
FCC budget request 707
Fiscal year 1989 supplemental request 669
Fort Lauderdale monitoring station 690
HDTV 672
High definition television 686
Inspector general 689
Lottery proposal 684
Minority ownership 669
Misleading informercials 705
Need for technology enhancements 669
Northern Pacific cable 671
Opening statement 651
Price caps 678
Reduced staffing in fiscal year 1989 669
Satellite dish questions 691
Spectrum auctions 676
Tariff 12 670
TV-Marti 686

LEGAL SERVICES CORPORATION

Alternative dispute resolution programs 549
Committee decisions 525
Competitive bidding 516, 541, 546
Fee-generating regulation 548
Fiscal year 1990 budget request 529, 542
Leadership of the Corporation 516
LSC Board:
    Appointment of a new 514
    Preparation for 518
Migrant programs 538
National and State support centers 534
Opening statement 425
Outside funding 536
Personal convictions 514
Quality of services 531
Regulation affecting alien representation 547
Regulation affecting private funds 539, 544
Regulation procedures 525
Reprogramming requests 523

SMALL BUSINESS ADMINISTRATION

7(a) guarantee business loans 597, 612
Alternate program approaches 596
Defaults on loans 596
Disaster loans 605, 613
Fiscal year 1990 shortfall and user fees 596
Guaranty fees 612
Loan assets sales 604, 613
Minority Business Development Agency 594, 603, 613
Opening statement 584

THE JUDICIARY

Attorney admission fees 634, 635
Caseload 633
Fiscal year 1990 budget 632
Hiring freeze 633
History of S–146 615
Impact of budget cuts 632

Page
Opening statement 615
Portfolio sales 597
Relocation of SBA 602
Small business development centers 595, 600
User fees 595

U.S. INFORMATION AGENCY

Seville 1992 World Expo 711

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